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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1950

No. 384

STANDARD OIL COMPANY,

Appellant,

vs.

THE STATE OF NEW JERSEY, BY THEODORE D. PARSONS, ATTORNEY GENERAL OF THE STATE OF NEW JERSEY

APPEAL FROM THE SUPREME COURT OF THE STATE OF NEW JERSEY

STATEMENT AS TO JURISDICTION

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STRYKER, TAMS & HORNER,
Of Counsel.

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SUPREME COURT OF NEW JERSEY

No. A-134—September Term, 1949

Appeal Docket No. 455

Civil Action

THE STATE OF NEW JERSEY, by THEODORE D. PARSONS, Attorney General of the State of New Jersey,

Plaintiff-Respondent,

vs.

STANDARD OIL COMPANY,

Defendant-Appellant

ON PETITION FOR APPEAL FROM THE SUPREME COURT OF NEW JERSEY TO THE SUPREME COURT OF THE UNITED STATES

STATEMENT IN SUPPORT OF JURISDICTION

The appellant, Standard Oil Company, a corporation of the State of New Jersey, in support of the jurisdiction of the Supreme Court of the United States to review the above entitled cause on appeal, respectfully shows:

(a) Statutory Provisions Sustaining Jurisdiction

The statutory provision which sustains the jurisdiction of the Supreme Court of the United States is Section

1257 of Title 28 of the United States Code, reading to the extent relevant here, as follows:

> "Final judgments or decrees rendered by the highest court of a State in which a decision could be had, may be reviewed by the Supreme Court as follows:
>
> "(1) * * *
>
> "(2) By appeal, where is drawn in question the validity of a Statute of any State on the ground of its being repugnant to the Constitution, treaties or laws of the United States, and the decision is in favor of its validity."

(b) Statute of the State of New Jersey the Validity of Which Is Involved

The statute of the State of New Jersey, the validity of which has been sustained by the final judgment of the Supreme Court of New Jersey, the highest Court of said State in which a decision could be had as not being violative of or repugnant to the Constitution of the United States, is an act providing for the escheat of certain personal property, being Chapter 155 of the Session Laws of 1946, P. L. 1946, page 713, as amended by Chapter 357 of the Session Laws of 1947, P. L. 1947, page 1157, New Jersey Revised Statutes 2:53-15 *et seq.* The provisions of the said statute are as follows:

> 1. "The term 'personal property' as used in this act shall mean and include moneys, negotiable instruments, choses in action, interest, debts or demands due to the escheated estate, stocks, bonds deposits, machinery, farm crops, live stock, fixtures, and every other kind of tangible or intangible property and the accretions thereon, up until the time of the filing of the bill of escheat, but shall not mean and include real property or property in the custody of any court in this State, nor any personal property covered by chapter one hundred ninety-nine of the laws of one thousand nine hundred and forty-five.

"Unless a different meaning clearly appears from the context, the word, phrase or term 'owner', 'beneficial owner', 'person', 'person having custody or possession', 'person having any interest', 'person entitled to', or any word, term or phrase of similar import, shall mean, include and refer to corporations, companies, associations, societies, firms, partnerships, joint stock companies, fiduciaries of any nature, as well as individuals. . . . as amended, L. 1947, . . . p. 1157."

2. "If any person, who, at the time of his death, has been or shall have been, the owner of any personal property within this State, and shall have died, or shall die, intestate, without heirs or known kindred, capable of inheriting the same, and without leaving a surviving spouse, such personal property, of whatsoever nature the same may be, shall escheat to the State."

3. "Whenever the owner, beneficial owner, or person entitled to any personal property within this State, has been or shall be and remain unknown for the period of fourteen successive years, or whenever the whereabouts of such owner, beneficial owner or person, has been or shall be and remain unknown for the period of fourteen successive years, or whenever any personal property wherever situate has been or shall be and remain unclaimed for the period of fourteen successive years, then, in any such event, such personal property shall escheat to the State . . . as amended L. 1947, . . . p. 1158 . . ."

4. "The Court of Chancery shall have jurisdiction in all cases where an escheat has occurred or shall occur under the provisions of this act. . . . as amended L. 1947, . . . p. 1158 . . ."

5. "Whenever, by reason of any information filed with the Attorney-General, or which comes to his notice so that he shall become aware of the fact that any personal property has escheated or is supposed to

have escheated to this State under the provisions of this act, he shall appoint some suitable person or persons to act as escheator of such property."

6. "Such escheator, when so appointed, shall proceed to collect and furnish to the Attorney-General or to such attorney or counsellor-at-law as he may designate, all the facts, information and evidence necessary to successfully prosecute the escheat in the Court of Chancery of this State."

7. "The proceedings in the Court of Chancery shall be by petition, in the name of the State of New Jersey, which petition shall set out that certain personal property therein designated has escheated to the State of New Jersey under the provisions of this act, and that the defendant named in such petition has custody or possession of such personal property. Such petition shall contain such other information as may be pertinent to the issue and shall petition the court to enter a decree escheating the personal property mentioned in said petition to the State of New Jersey. Such petition may describe in general terms the type or kind of such personal property, and may set forth:

"(a) That the defendant named in such petition has custody or possession of such personal property, and that the owner of, beneficial owner of, or person entitled to, the same has been and remains unknown for the period of fourteen successive years; or

"(b) That the whereabouts of such owner, beneficial owner or person entitled to such personal property has been and remains unknown for the period of fourteen successive years; or

"(c) That such personal property of such owner has been and remains unclaimed for the period of fourteen successive years; or

"(d) That the owner of such personal property has died intestate without heirs or known kindred capable of inheriting the same and without leaving a surviving spouse.

"Such petition may combine more than one of the above contingencies and relate to more than one person. The person having possession of such personal property may, after the filing of such petition, be required by an order of the Court of Chancery to furnish to the Attorney-General, or his deputy appointed to prosecute the action, all information such person having possession of such personal property may have with relation to the last known address of any person having any interest in, together with any other information relating to, such personal property.

"The Court of Chancery shall, upon the filing of such petition, make an order requiring the defendant to answer the petition within a time therein limited. Such order shall contain such other directions as the court may deem appropriate for the speedy determination of the cause, the protection of the property, or for the disclosure of information pertinent to the prosecution of the cause. A copy of the petition and order shall be served upon the defendant in the manner provided in the said order, whereupon the defendant shall, within the time limited, answer said petition and comply with said order. Upon the filing of defendant's answer, and his compliance with such order, the court shall, by a further order, designate a time and place for the hearing of said petition.

"A notice containing a summary of the order designating the time and place of hearing, as approved by the court shall be published in a manner directed by the court and shall also be published once a week for three successive weeks in a newspaper of general circulation designated by the court; *provided, however,* that in the event the value of the personal property of any one owner is less than fifty dollars ($50.00), publication may be dispensed with if the court so directs. Such notice shall direct that any person who may claim to be entitled to the personal property mentioned in the petition, or to any part thereof or interest therein, shall file with the court his claim in writing, at least five days prior to the date fixed for the hearing. . . . as amended L. 1947, . . . p. 1158 . . ."

8. "Any person claiming to be entitled to the personal property described in the petition, or to any part thereof, or to any interest therein, shall file his claim in the general form of an answer to the petition, which answer shall set forth in such detail as the court may require why the answering party contends that the property mentioned in the petition should not escheat to the State and, if the answering party shall claim any right to or interest in said property, the nature thereof; and the court shall at the time of hearing take such evidence as may be proper, and proceed to determine the cause and enter such final decree as shall be equitable and just and in conformity with the provisions of this act. Such decree may determine the title to such personal property, and where the court shall find that such personal property, in whole or in part, has escheated to the State the decree shall so declare, and such personal property, or so much of it as the court shall decree, shall thereupon escheat to the State.

"In the event no answering pleadings be filed within the time fixed by order of the court, the court may proceed upon the petition alone and enter a decree declaring that the property described in the petition has escheated to the State.

"All the proceedings outlined herein shall be in conformity with the rules and practice of the Court of Chancery except as herein otherwise specified. . . . as amended L. 1947, . . . p. 1160."

9. "Upon the filing of a final decree escheating personal property, the person having such property in their possession shall forthwith deliver the same to the Treasurer of the State of New Jersey. If such personal property be in the form of money, the Treasurer shall pay the same into the general funds of the State; if in the form of negotiable securities, he shall sell the same and deposit the proceeds thereof into the treasury of the State; if in the form of other personal property, it shall be his duty to give public notice thereof and shall then proceed to sell the said property at public

or private sale, as he may deem to the best interests of the State, and shall deposit the proceeds thereof in the general funds of the State.

"Before so depositing the proceeds of said escheated property in the public fund, he shall deduct therefrom five per centum (5%) of the moneys so received and shall pay the same to the escheator as a reward for having supplied the information and evidence upon which the escheat has been successfully prosecuted and shall pay such other fees and costs as the decree shall direct.

"The Court of Chancery shall, in its final decree, fix the fees and expenses of the attorney or counsellor who shall have prosecuted the escheat in the Court of Chancery. The fees and expenses shall be deducted from the moneys received by the State Treasurer or from moneys realized by him from the sale of said personal property and shall be paid by him as directed by said decree."

10. "Any decree entered pursuant to the act to which this act is a supplement, shall automatically operate as a full, absolute and unconditional release and discharge of the person having such property in possession or custody from any and all claim, demand, or liability to any person whatever other than the State Treasurer with respect to such property, and such decree may be pleaded as an absolute bar to any action brought against such person with respect to such property by any person other than the State Treasurer. L. 1947 . . . p. 1161, . . . supplementing L. 1946, C. 155."

11. "In order to ascertain if any person has knowledge of or is in possession of any escheatable property, it shall be lawful for the Attorney-General or his deputy as designated herein to file a bill of discovery in the Court of Chancery requiring any such person or persons, named in such bill, to divulge any information they may have concerning the possession or location of any property subject to escheat, or any other

information pertinent to the recovery of such property by the State of New Jersey or which information may lead to the discovery of such escheatable property."

12. "All proceedings in escheat in the Court of Chancery shall be without costs to the State or to the parties defendant except that the court may impose such costs or counsel fees against a defendant where such defendant shall be found by the court to have defended the escheat proceedings without reasonable cause or justification."

13. "It shall be lawful to join more than one escheatable property or estate and more than one defendant having possession thereof in one bill where it appears that the amount of escheatable property in each case does not exceed one thousand dollars ($1,000.00)."

14. "Any person aggrieved by an order or decree of the court, declaring or denying the escheat of any personal property, may appeal therefrom and the proceedings upon such appeal shall be as in the case of appeals from any order or decree of the Court of Chancery."

15. "The title to property acquired by purchasers sold under and by the provisions of this Act shall be absolute."

16. "The Attorney-General or his deputy as designated herein shall at all reasonable times have access to and be entitled to certified copies of all public papers and reports filed with any department of the State Government, free from any cost, charge or fee."

17. "Upon the final determination of an adjudication in any escheat proceedings provided herein, the Attorney-General shall cause a duly certified copy of such adjudication or decree to be transmitted to the State Treasurer."

18. "Any person whose property may have escheated to the State as provided herein, or any rightful heir entitled to such property by descent, may, within two years after the filing of the final decree in the Court

of Chancery, apply to said Court of Chancery to reopen the said decree and upon proof that they were without actual knowledge of such escheat proceedings, and of proof of ownership of such property or the right to possession thereof, the court may in its discretion reopen the decree and in the event that the aforesaid decree in part or in whole be revised or amended, the court may direct the State Treasurer to repay such part of the moneys received by the State Treasurer by reason of such decree, to the party or parties in the amended decree entitled to have the same, and upon the entry of such final decree the State Treasurer shall repay the said moneys as provided in such decree; *provided, however*, that there shall first be deducted all expenses and charges that may have accrued or been paid out by reason of the entry of the original decree."

19. "The provisions of this act are severable, and in the event of any provision hereof being declared unconstitutional, it is hereby declared as the legislative intent that such unconstitutional provision shall not affect any other provision of this act."

The particular provisions of the statute which are the subject of petitioner's attack upon it as repugnant to the Constitution of the United States are sections 1 and 2 and section 7, as amended, and particularly the last paragraph of said section 7, and also section 8, when considered in connection with sections 9 and 10.

As will hereafter appear the said statute and the judgment entered pursuant thereto violate the due process of law provision of the Fourteenth Amendment to the Constitution of the United States in the following respects:

A. The statute authorizes the State of New Jersey, by taking the procedure therein outlined, to take the property of non-residents of New Jersey which property has no situs for the purpose of escheat within the State of New Jersey and over which the New Jersey Court has no jurisdiction.

B. Under the provisions of the statute and the judgment of the Court, as affirmed by the Supreme Court, the claims of third persons against the Standard Oil Company appellant for dividends and the shares of capital stock in appellant were escheated by the state without adequate notice to the owners of such property of the proceedings which resulted in the judgment and without an opportunity to be heard in violation of the due process of law provision of the Fourteenth Amendment of the Federal Constitution.

C. Under the statute and the judgment of the Supreme Court pursuant thereto, the appellant is required to pay to the State of New Jersey dividends on its capital stock to which third persons are entitled and to transfer to the State of New Jersey, in order that the same may be sold, shares of its capital stock in the ownership of third persons without any valid provision which protects the appellant from subsequently being required to pay such dividends to the owners thereof or to issue such shares of stock to the owners thereof or to pay damages to the owners of such shares, which results in depriving the Standard Oil Company appellant of its property in violation of the due process of law provision of the Fourteenth Amendment of the Constitution of the United States.

The statute violates Article I, section 10, paragraph 1, of the Constitution of the United States in that it deprives the owners of such claims and of shares of stock of their remedy for the enforcement of their contract rights without providing any adequate substituted remedy and thereby impairs the obligation of the contracts upon which such claims are based.

(c) Date of Judgment and Application for Appeal

The judgment of the Supreme Court of New Jersey here sought to be reviewed was entered on June 27, 1950,

although the form of judgment provided that it should issue ten days after said date, unless an application for a re-hearing shall have been granted or is pending or unless otherwise ordered by the Court. No application for a re-hearing was made, and the Court did not otherwise order. The date on which the application for appeal was presented was September 21, 1950 and the appeal was allowed on September 21, 1950.

Under the provisions of section 2101(c) of Title 28 of the United States Code, petitioner may take or apply for an appeal at any time within ninety days after the entry of the judgment of the Supreme Court of New Jersey.

(d) Nature of Case and Kuling Below

On July 27, 1948, the State of New Jersey commenced this proceeding in the Court of Chancery of New Jersey by filing therein a petition pursuant to the provisions of said act and serving the same upon this petitioner (defendant in the said proceeding). The Chancery petition alleged that Standard Oil Company had in its custody or possession property which is subject to escheat under the above mentioned act on the alternative grounds provided in the said statute, namely that:

> (1) The owner of such property had died intestate without leaving anyone capable of taking;
> (2) The owner had been unknown for fourteen successive years;
> (3) The property had been unclaimed for fourteen successive years;
> (4) The whereabouts of the owners had been unknown for fourteen successive years.

The Chancery petition is found in the record at D-1a *et seq.* (page 1 of defendant-petitioner's appendix to Petition for Certification.) Upon the filing of the petition the Court made an order requiring the defendant, Standard Oil Com-

pany, to retain in its custody or possession "such escheatable personal property as it now has in its custody or possession" until the further order of the Court, and also requiring the defendant to state in its answer such information regarding "the escheatable personal property in its custody or possession as is pertinent to the prosecution of this cause."

On August 24, 1948, Standard Oil Company, the defendant in said proceeding, filed its answer (D-8a) denying that it had in its custody or possession any personal property which had escheated to the State of New Jersey, admitting, however, that its books of account showed the existence of certain alleged claims against it which had been unpaid for fourteen years and that it had no certain knowledge as to the present address of the alleged claimants.

Annexed to the answer were schedules showing dividends on capital stock of the Standard Oil Company which had been unclaimed for fourteen years and the names and last known addresses of the persons shown by its books to be entitled to such dividends, and also showing the names and last known addresses of the record owners of shares of its capital stock, whose whereabouts had been unknown to it for fourteen years.

The original answer alleged that many, if not all, of the persons named in the Schedules to whom such claims were at one time payable were never citizens or residents of the State of New Jersey and that the claims of such persons never had a situs in New Jersey for the purpose of escheat, and that a decree of the Chancery Court enforcing such escheat would not protect the Standard Oil Company from the claims of other states, particularly the State of New York where the Standard Oil Company is sueable or in any other jurisdictions where it is sueable, D-12a. The

answer further alleged that the respective last known domiciles of the record owners of the shares of stock mentioned in the Schedule was outside the State of New Jersey and that so far as the defendant was informed and believes, neither the record owners of said stock nor any other person who may now own the same was ever domiciled or ever resided in the State of New Jersey, and alleged that the said State was without jurisdiction or power to escheat said shares of stock that so to do would deprive the owners of said shares of their property without due process of law in violation of the Fourteenth Amendment of the Constitution of the United States and would expose the said defendant-petitioner herein to liability to the true owners of said shares of stock. It alleged that such liability might be asserted in the State of New York where the defendant is sueable.

On September 15, 1948, pursuant to a new Constitution of the State of New Jersey, the jurisdiction of the Court of Chancery and all cases then pending therein were transferred to the Chancery Division of the Superior Court.

Pursuant to a pre-trial order (D-31a) a hearing on the issues raised by the pleadings was set for November 30, 1948. Pursuant to an order fixing the time and place of hearing (D-32a) a notice of such hearing was published for three weeks in a newspaper published in Trenton, New Jersey, in which notice neither the amounts of the respective claims sought to be escheated nor the names and addresses of the former owners thereof were set forth. The adequacy of this notice was attacked by petitioner in its brief and oral argument on the above mentioned hearing.

On March 3, 1949, the Judge of the Trial Court filed his conclusions on the submission of certain legal issues for determination, D-36a. Most of this opinion was devoted

to the defense of the statute of limitations of New Jersey which is not involved in this appeal. However, the opinion contains the following with respect to the objections raised to the adequacy of the notice provided by the statute and of the notice actually given of the time and place of final hearing:

> "It may be informative for me to make some comment upon the requisites of the notice to be published in conformity with the probable intent and interpretation of R. S. 2:53-21, N. J. S. A.
>
> "Frankly, I regard the impoverished provisions pertaining to the notice to be given as an infirmity in the act, but not a mortal one. Viewed in its entirety the statute does afford a claimant a day in court. It also authorizes resort to service by publication. Due process requires such a notice to be reasonably adequate in its information and publication to safeguard the right comprehended by the Constitution. *Anderson National Bank* v. *Luckett, supra; Security Savings Bank* v. *California, supra; Hyman* v. *Muller*, 62 A. 2d 221.
>
> "I accordingly recommend to the Department of Law that in addition to 'a summary of the order designating the time and place of hearing,' the notice should also contain the names and last-known addresses, and amounts of money or character of property belonging to any such person or for whose benefit it is held. See Purdon's Pa. Stat. Ann. Title 27, § 438."

The Trial Court declined to pass on the question of the situs of the claims involved in the case until proof had been presented at the final hearing.

Subsequent to the preliminary hearing and prior to the final hearing, the parties agreed to a stipulation of facts which was filed with the Court (D-60a to 206a). This stipulation, among other things, set forth in Exhibit 2 thereto annexed, the names and last known addresses of the persons appearing by the books of the defendant to be

entitled to dividends which had been unpaid for fourteen years. The last known addresses of the stockholders who had claims to unpaid dividends, included stockholders whose last known addresses were in Mexico, Java, Germany, Switzerland, Uruguay, Chile, Argentine Republic, Venezuela and Holland (D-92a to D-199a) and also persons whose last known addresses were in the States of California, Illinois, and other states of the United States. The stipulation contained the names and last known addresses of the record owners of capital stock of Standard Oil Company (D-198a to 199a) only one of whom had a last known address in New Jersey. One was in New York City, one in Merida, Yucatan, Mexico; one in Watsonville, California; one in River Forest, Illinois; two in Springfield, Massachusetts; two in Kansas City, Missouri; one in Charleston, South Carolina; one in Colli De Bucarelli, Mexico.

It was further stipulated that since 1927 Standard Oil Company has had no office nor place of business within New Jersey except its registered office at Flemington, New Jersey, and since said time, Standard Oil Company has had no tangible property in New Jersey other than its stock and transfer books (D-90a).

By leave of the Trial Court and with the consent of the State the defendant-petitioner herein filed amendments to its answer.

The third defense in the amended answer (D-209a *et seq.*) alleges that none of the contracts which give rise to the claims or interest in property set forth in Schedule A annexed to the original answer or in the Exhibits attached to the stipulation of facts was made in New Jersey, nor to be performed in New Jersey. Such contracts were enforceable elsewhere. With the exception of the claimants shown in the Schedule annexed to the original answer

and in the Exhibits attached to the stipulation as having last known addresses within New Jersey, none of the persons listed in such Schedule or Exhibit, as formerly entitled to the claims set forth therein were residents of or domiciled in New Jersey; that the State of New Jersey had no jurisdiction of the choses in action set forth in Schedule A annexed to the original answer or in the Exhibits attached to the stipulation of facts because such choses in action never had a situs in the State of New Jersey for the purpose of escheat; that said claims, if subject to escheat in any jurisdiction, would be subject to escheat in jurisdictions other than New Jersey and that any decree of the Court which purported to discharge Standard Oil Company from its obligations to pay such claims would be of no force and effect and not binding upon the persons entitled to said claims nor upon any other jurisdiction which might seek to escheat said claims. In this answer it was alleged that any decree entered under the statute to escheat such claims would deprive this defendant of its property without due process of law in violation of the Fourteenth Amendment of the United States Constitution.

The fourth defense alleged that because of the inadequacy of the statutory notice to the claimants a judgment of escheat entered pursuant to the statute would deprive such claimants of their property without due process of law in violation of the Fourteenth Amendment of the Constitution of the United States; that the decree entered pursuant to such statute would not protect this defendant against the claims of such claimants and would deprive this defendant of its property without due process of law in violation of the Fourteenth Amendment of the Constitution of the United States.

The fifth defense alleged that the procedure provided by the statute when resulting in a decree of escheat would

deprive the claimants of the remedy under their respective contracts with the defendant, without substituting any adequate remedy in place thereof in violation of Article I, section 10, paragraph 1, of the Constitution of the United States and of the due process of law provision of the Fourteenth Amendment of the Constitution of the United States. The inadequacy of the substituted remedy provided by the statute as alleged in the said fifth defense was based upon the inadequacy of the notice prescribed by the statute, the entire inadequacy of the publication thereof in view of the facts and circumstances of the case and the inadequacy of any subsequent remedy of the claimants against the State. This defense further alleged that any decree requiring the defendant to pay these claims to the State of New Jersey would not be binding on the persons entitled to said claims.

On March 21, 1949, the Trial Court entered an order fixing April 27, 1949 at the State House Annex, Trenton, New Jersey as the time and place of final hearing of the cause and directing that the notice of such final hearing be advertised in a newspaper of general circulation in Mercer County once a week for three successive weeks, addressed to and containing the names and last known addresses of persons or corporations apparently having unclaimed beneficial interest in or ownership of the personal property sought to be adjudged to escheat to the State and directing that any of the said persons or corporations or any other person or corporation claiming a beneficial interest in or ownership of the personal property, or any part thereof mentioned in the petition, shall file with the Court his or its claim in writing at least five days prior to the date fixed for the hearing, *provided, however,* that in the event the value of the personal property of any one apparent owner is less than $50.00 the advertisement need not contain the name or address of such person or corporation.

The validity of this proviso was attacked in the Court below, both under the State Constitution and the Fourteenth Amendment of the United States Constitution and the Supreme Court determined that it was invalid but that it was severable from the rest of the act. The validity of the above mentioned proviso is, therefore, not within this appeal.

The notice was published three times in the Trenton Times, a newspaper published in Trenton, New Jersey, appears on D-55a to 58a. It was not addressed as required by the order but it contains the names and last known addresses of twenty-one persons, some of whom are the record owners of capital stock of Standard Oil Company, and unpaid dividends thereon and others of whom are only the owners of unpaid dividends. The addresses include New York City; Yucatan, Mexico; Memphis, Tennessee; Dallas, Texas; Wheeling, West Virginia; Washington, D. C.; River Forest, Illinois; Logan, Ohio; Kansas City, Missouri; Springfield, Massachusetts; Charleston, South Carolina; Calle De Bucarelli, Mexico, and Manhattan, Kansas.

After extended argument on the day fixed for hearing and the submission of briefs by both parties, the Trial Judge determined that the notice was adequate; that every claimant had had an adequate opportunity for a hearing and a determination of his rights; that all of the claims had a situs in New Jersey for the purpose of escheat and that the statute was valid and not subject to any of the objections raised in the answer as amended and argued at length in the briefs and oral argument. His opinion is reported in 5 N. J. Superior, page 460. Portions of the opinion which deal with the questions herein involved are reported at pages 475 *et seq.* A copy of said opinion is

hereto annexed as Exhibit A. The pertinent portions of said opinion appear at Pages 43 to 47 of this Statement.

Pursuant to the statute above mentioned the judgment of the Trial Court determined that unpaid dividends amounting to $6,238.01; twelve shares of common stock of Standard Oil Company having an aggregate par value of $300.00; unpaid wages of former employees of Standard Oil Company amounting to $31,381.08; amounts withheld of former employees of Standard Oil for the purchase of Liberty Bonds aggregating $1,210.00 and amounts of unpresented commercial bank checks issued by Standard Oil Company aggregating $8,561.62; amounts due on account of debenture coupons aggregating $3,125.00 were all subject to escheat and required Standard Oil Company, the petitioner herein, to pay the above amounts to the State of New Jersey and to issue in the name of and deliver to the Treasurer of New Jersey certificates for twelve shares of common stock of the Standard Oil Company which last mentioned certificates were not in possession of or under the control of the Standard Oil Company. The judgment further fixed the fees of counsel and of the escheator.

Pursuant to the rules of the New Jersey Supreme Court, the court of last resort in New Jersey, that court, on application of Standard Oil Company, the petitioner herein, made an order certifying the above mentioned judgment of the Superior Court to the Supreme Court.

The questions involved in the said appeal to the Supreme Court which are material to this application included (1) the contention of the petitioner herein that the choses in action and shares of capital stock which the judgment escheated to the state had no situs in the State of New Jersey for the purpose of escheat; that the Superior Court was, therefore, without jurisdiction, and that the provisions of the statute which authorized entering such judgment were in violation

of the due process of law provisions of the 14th Amendment of the Constitution of the United States; (2) that because of the foregoing, the said judgment did not protect the petitioner herein from the assertion by the owners of such shares of stock, or of any of such claims of their claims against the petitioner herein; (3) that the notice prescribed by the statute and the procedure therein prescribed did not afford to the claimants adequate notice of the time, place and purpose of hearing and an opportunity to appear and assert their claims and that the statute and the judgment entered pursuant thereto deprived the owners of such claims and of such shares of stock of their property without due process of law in violation of the 14th Amendment of the Constitution of the United States and that such statute and the judgment entered thereunder are invalid; (4) that the judgment of the Superior Court, pursuant to the statute is invalid because it attempts to deprive the owners of the claims of their remedy for the enforcement of the contracts upon which such claims were based without substituting any adequate remedy for the enforcement of such contracts and that, thereby, the obligation of such contracts was impaired in violation of Article I, Section 10, paragraph 1 of the Constitution of the United States. Because such judgment is invalid it affords no protection to the defendant-petitioner herein. All of the questions above mentioned were fully argued in the briefs and orally before the Supreme Court.

The Supreme Court modified the judgment of the Superior Court by determining that choses in action, the enforcement of which was barred by the New Jersey Statute of Limitations, were not included within the purview of the act and therefore could not be escheated thereunder.

The Supreme Court held, however, that claims for dividends and claims for shares of capital stock were not barred

by the Statute of Limitations and affirmed the judgment of the Superior Court escheating such claims. A copy of such judgment is hereto annexed and marked "Exhibit B" (Page 47 of this Statement).

The Supreme Court determined that the notice prescribed by the statute was adequate; that the publication of the notice and the time allowed to the claimants for the presentation of their claims to the court was sufficient; that the choses in action covered by the decree all had a situs in New Jersey for the purpose of escheat, notwithstanding the fact that the contracts on which choses in action were based were not made in New Jersey, that the owners of such choses in action were never in New Jersey and that the contracts were enforceable against the petitioner herein outside of New Jersey. The New Jersey Supreme Court accordingly held that neither the statute nor the procedure thereunder violated the due process of law provisions of the 14th Amendment of the Constitution of the United States or Article I, Section 10, paragraph 1, of said Constitution.

The dissenting opinion of Chief Justice Vanderbilt, in which Justice Case concurred, held that the notice prescribed by the statute was entirely inadequate, that the statute did not require the names and addresses of the last known owners of the claims in question to be stated in such notice or that the character of the property be specified therein, or that the basis of escheat be set forth therein; that the requirement that the notice be published for three successive weeks in a newspaper in Mercer County, New Jersey, and that the claimants of the property involved in the proceeding must file their claims within five days prior to the time fixed for the hearing was also inadequate and that the statute violated the due process of law provisions of the 14th Amendment of the Constitution of the United States. The two dissenting judges voted for a reversal of the judgment below in its entirety because of the inade-

quacy of the notice prescribed by the statute and the inadequacy of the opportunity for a hearing. A copy of the opinion of the Supreme Court and of the dissenting opinion is hereto annexed, marked "Exhibit C" (Page 49 of this Statement. A copy of the judgment of the Supreme Court is hereto annexed, marked "Exhibit D" (Page 73 of this Statement).

Substantiality of the Questions Involved

Standard Oil Company, the petitioner herein, respectfully represents that the questions involved in its appeal to the Supreme Court of the United States are of a substantial nature.

It is well established that an appeal will not be dismissed for want of a substantial Federal question, unless the questions of the appellant are "clearly not debatable and utterly lacking in merit as to require dismissal for want of substance." *Hamilton* vs. *Regents of the University of California*, 293 U. S. 245, 258. See also *Alton R. Co.* vs. *Ill. Com.*, 305 U. S. 548, 550; *Cheseboro* vs. *Los Angeles Co. Dist.*, 306 U. S. 459, 463.

The issues raised by Standard Oil Company, petitioner herein, are that the statute here in question violates the due process of law clause of section 1 of the Fourteenth Amendment to the Constitution of the United States and the provision of Article I, section 10, paragraph 1, of the Constitution of the United States which provides that no state shall pass any law impairing the obligations of contracts.

The contention that the statute in question violates the due process of law provision of the Fourteenth Amendment is based in part upon the belief that the statute could not lawfully provide for the escheat of the choses in action in question because such choses in action had no situs in New Jersey for the purpose of escheat.

The Supreme Court of New Jersey held that "the sovereignty in which the corporation lives and has its being has dominion over its debtor obligations through its control of the corporation." Citing: *Security Savings Bank* v. *California*, 263 U. S. 282; *Anderson National Bank* v. *Luckett*, 321 U. S. 233; *State Tax Commission* v. *Aldrich*, 316 U. S. 174; *Northwest Airlines, Inc.* v. *Minnesota*, 322 U. S. 292; and *Connecticut Mutual Life Insurance Company* v. *Moore*, 333 U. S. 541.

The cases cited are readily distinguishable from the case at bar. In *Security Savings Bank* v. *California* the jurisdiction of the Court over deposits made by non-residents was sustained on the ground that the unclaimed deposits were debts due by a California corporation with its place of business there, and that they arose out of contracts made and to be performed there. See page 285. The facts in the *Anderson National Bank* were the same in this respect as in the *Security Savings Bank* case.

In the case at bar the last known owners of almost all of the choses in action are non-residents of New Jersey. There is no proof that they were ever in New Jersey or ever had any contact with that State, except the ownership of stock in a New Jersey corporation, and the resulting right to dividends on such stock.

The Standard Oil Company has had no place of business in New Jersey since 1927 and owns no tangible property therein, except certain records at its registered office. The contracts on which the claims are based were not made in New Jersey and were not to be performed there. While they were enforceable in New Jersey, they were also enforceable in the State of New York and elsewhere where jurisdiction of the Standard Oil Company may be secured.

In *United States* v. *Klein*, 303 U. S. 276, the funds escheated by the State of Pennsylvania were within the control of the United States District Court of a Pennsylvania district. The claimants to such funds could not secure them

without coming into Pennsylvania and establishing their claims before that Court.

State Tax Commission v. *Aldrich*, 316 U. S. 174; *Northwest Airlines* v. *Minnesota*, 322 U. S. 292, were tax cases. We concede that a close in action may at the same time have a situs in more than one jurisdiction for the purpose of taxation, and perhaps for some other purposes. We contend that a chose in action may not have a situs in more than one jurisdiction at the same time for the purpose of escheat.

An escheat case differs radically from the subject matter involved in *Pennington* v. *Fourth National Bank*, 243 U. S. 269, cited in the opinion in *Security Savings Bank* v. *California*. In the *Pennington* case, a bank deposit of a non-resident defendant was attached at the suit of his wife in order to satisfy her claim for alimony. In other words, the property of the non-resident defendant was not confiscated but was devoted to the payment of a lawful claim against him. In the case at bar, the judgment confiscates shares of capital stock and dividends stock of the certain stockholders of the defendant thereof simply because the defendant has not known the whereabouts of the owner for fourteen years.

We have found no decision of the United States Supreme Court or, in fact, any decision of a state court which determines that a chose in action owned by a non-resident, based upon a contract made outside of the State of the domicile of the corporate party to the contract, and not required to be performed in such State and enforceable outside of such State, as well as within it, has a situs in the State of the domicile of the corporation for the purpose of escheat. This is one of the questions which the petitioner desires to present to the United States Supreme Court in its appeal.

The decision of the United States Supreme Court in *Connecticut Mutual Life Insurance Company* v. *Moore*, 333 U. S. 541, dealt with the validity of a statute of New York

which required insurance companies organized under the law of states other than New York to pay over to that State proceeds of insurance policies unclaimed for a designated period. The United States Supreme Court determined that the New York statute was valid with respect to policies issued for delivery in New York upon the lives of persons then resident therein, if the assured continued to be a resident of New York and the beneficiary was a resident of such State at the maturity of the policy. See 333 U. S. at page 550. The case cited was an action for a declaratory judgment.

It appears in the dissenting opinion of Mr. Justice Jackson that some of the insurance policies involved in the case cited were within the Pennsylvania statute of escheats, as the issuer of such policies, was a corporation of the State of Pennsylvania. The Court did not directly pass upon the power of the State of Pennsylvania to escheat the proceeds of the same policies which it held that the State of New York had the power to take. That question is involved in principle in the case at bar. If the State where the contract was made and where the claimants thereunder reside has the power to escheat the claims, we respectfully submit that New Jersey has no such power. In such a case the judgment of the State Court is void and affords no protection to the defendant-petitioner against the State having the jurisdiction to escheat such claims or against the owners of the claims included in the judgment.

With Respect to the Adequacy of the Statutory Notice

With respect to the adequacy of the notice prescribed by the statute, we respectfully submit that the statute in question fails to provide for the claimants a reasonable notice of the time and place of hearing and an opportunity to be heard and that, in this respect, the statute violates the due process of law provision of the Fourteenth Amendment. In *Secur-*

ity Savings Bank v. *California*, 263 U. S. 282, 287, the court, after stating that it was not of legal significance whether the proceeding be described as *in rem* or *quasi in rem*, said:

> "In either case the essentials of jurisdiction over the deposits are that there be seizure of the *res* at the commencement of the suit; and reasonable notice and opportunity to be heard."

In the case cited, each depositor was made a party to the proceeding. The summons issued therein named all of the parties and was published, together with a notice to any unknown person claiming under such parties. The procedure is outlined in the opinion of the Supreme Court at pages 284 and 285 and also in the opinion of the California Supreme Court, 186 California 419. *Anderson National Bank* v. *Luckett*, 321 U. S. 233, did not involve an escheat which divested the title of the depositor as in the case at bar. The procedure considered by the court involved merely a custodial taking by the state. The statute provided proceedings for a subsequent escheat but these proceedings were not considered by the court. Notwithstanding this fact, the court held that if the statute failed to provide for adequate notice to the depositors, the bank would not be protected from claims against it by such depositors.

The requirement of adequate notice is also stated in the opinions in *Windsor* v. *McVeigh*, 93 U. S. 274 and *Hassell* v. *Wilcox*, 130 U. S. 493.

The only statutory procedure for notice in the case at bar is contained in Section 7 of the act and is as follows:

> "A notice containing a summary of the order designating the time and place of hearing as approved by the Court shall be published in a manner directed by the Court and shall also be published once a week for three successive weeks in a newspaper of general circulation designated by the Court * * * such notice shall direct that any person who may claim to be entitled to

the personal property mentioned in the petition, or to any part thereof or interest thereon shall file with the Court his claim in writing at least five days prior to the date fixed for hearing."

Attention is called to the fact that all that the statute requires the notice to contain is a summary of the order designating the time and place of hearing. The only publication that it requires is a publication for three successive weeks in a newspaper of general circulation. The only opportunity that a claimant has to appear and be heard is upon filing his claim in writing at least five days prior to the date fixed for hearing.

The order fixing the time and place of hearing does not contain the name of any claimant and does not describe any of the property in question. Neither does it refer to the character of the proceeding and a summary of the order is all that the statute requires to be published. Such a summary would mean nothing to the owner of any of the claims if, perchance, it should be called to his attention. The order was made on the 21st day of March, 1949 and the time and place fixed for hearing was the 27th day of April, 1949, at 10:00 A. M. at the Court Room, State House Annex, Trenton, New Jersey.

It is true that the order provided that the notice published should be addressed to and contain the last known names and addresses of the persons or corporations apparently having unclaimed beneficial interest in or ownership of the personal property sought to be adjudged to escheat. The notice actually published was not addressed to anyone although the body of the notice contained the names of 22 claimants and specified the property to which they appeared to have title. The order did not expressly require that the character of such personal property should be specified in the notice or that the reason for the claimed escheat should be therein stated.

We respectfully submit that the test of the validity of the act with respect to notice and an opportunity to be heard is what may be done by complying with its provisions. If the act itself fails to require adequate notice, the fact that the Court, although not required by the act so to do, supplements the requirement of the act, will not render either the act or the procedure thereunder valid. See *Stuart* v. *Palmer*, 74 N. Y. 183, Ct. of Appeals 1878, cited with approval and followed in *Wuchter* v. *Pizzutti*, 276 U. S. 13 (1928). See also *Security Trust Company* v. *Lexington*, 203 U. S. 323 (1906); *Coe* v. *Armour Fertilizer Works*, 237 U. S. 413 (1915) and cases therein cited.

The Supreme Court of New Jersey, in its opinion, conceded that the statute would be invalid and the procedure thereunder would have no validity if the statute failed to provide for adequate notice and an opportunity to be heard. The court said, however, 5 N. J. at page 307 and in Exhibit C (Pages 67 and 68 of this Statement).

> "And it is implicit in the statute that the notice shall identify the property of which escheat is sought and the last known owner. That is of the very nature of the notice thus prescribed. There could not be 'notice' within the view of the statute without identification of the subject matter of the proceeding."

It will be noted that the Supreme Court did not definitely state that the statute required that the basis of the State's claim of escheat should be stated in the notice.

The dissenting opinion said with reference to the notice:

> "The notice to be given to the owners of the property of what escheat is sought is provided by R. S. 2:53-21. It does not require that the names and addresses of the last known owners be given, nor that the character of the property be specified, nor that the basis of escheat be set forth. This notice, moreover, need only be published once a week for three successive

weeks in a single newspaper, and the owner to whom it is supposedly directed must file his claim five days before the time fixed for the hearing. Such notice is wholly inadequate when it is borne in mind that the very purpose of the act is to extinguish the rights of persons whose names or whereabouts are unknown. Neither the information contained in the notice, nor the publication of it, nor the time allowed to file a claim are reasonably calculated to inform the owners of the property of the impending proceedings and to give them an opportunity to appear and protect their interests. The notice required by the statute is, in effect, no notice at all to anyone."

We concede that ordinarily the United States Supreme Court accepts the construction of a state statute adopted by the highest court of the state. We respectfully submit, however, that the meaning attributed by the New Jersey Supreme Court to the portion of Section 7 of the New Jersey statute which has above been quoted is not based upon anything expressed or reasonably implied in the statutory provisions. The language of the statute prescribes what shall be included in the notice and the court is authorized by the statute to approve any notice which complies with the statutory requirements. the fact that the trial court supplemented the requirement of the statute does not render the act or the procedure thereunder valid. Neither is the statute rendered valid by a construction thereof not supported by anything contained in the statute.

The above quoted language of the Supreme Court is equivalent to a statement that a notice which contained only what the statute expressly requires would be no notice and, therefore, the court added to the statute a requirement which was not there. The excerpt from the dissenting opinion, which has been quoted above, is based upon the language of the act with no attempt at judicial legislation.

The case at bar differs widely from *American Land Company* v. *Zeiss*, 219 U. S. 47, in which it was held that the court would accept the construction of a statute of California which had been adopted by the Supreme Court of that state. In the *American Land Company* case, the construction placed upon the statute by the State Court was a reasonable construction fairly implied by the language of the statute. The language of the statute in the case at bar is so clear that there is no room for construing it otherwise than by the meaning of the words the Legislature used.

In *Scott* v. *McNeal*, 154 U. S. 34, at page 45, the court said:

> "Upon a writ of error to review the judgment of the highest court of a State upon the ground that the judgment was against a right claimed under the Constitution of the United States, this court is no more bound by that court's construction of a statute of the Territory, or of the State, when the question is whether the statute provided for the notice required to constitute due process of law, than when the question is whether the statute created a contract which has been impaired by a subsequent law of the State, or whether the original liability created by the statute was such that a judgment upon it has not been given due faith and credit in the courts of another State."

The objection to the notice required by the statute in this case is not only to the inadequacy of its language but also to the fact that publication three times in a newspaper in Trenton, New Jersey, where none of the claimants resided or ever had resided so far as the record shows was wholly inadequate. The newspaper was circulated in a place where it was almost certain not to be seen by the claimants in Mexico, California, Texas and Kansas City, although the last known addresses of the claimants which

appeared in the record clearly indicated places where more useful publication could have been made.

The State Supreme Court relied, in its opinion, on the recent decision of the United States Supreme Court in *Mullane* v. *Central Hanover Bank & Trust Company*, 339 U. S. 306, 94 Law Ed. 578, 1950. We respectfully submit that the State Court misapprehended the legal effect of such decision. In the case cited, the court said at page 583:

> "But when notice is a person's due, process which is a mere gesture is not due process. The means employed must be such as one desirous of actually informing the absentee might reasonably adopt to accomplish it. The reasonableness and hence the constitutional validity of any chosen method may be defended on the ground that it was in itself reasonably certain to inform those affected, compare Hess *v.* Pawloski, 274 U. S. 352, 71 L. Ed. 1091, 47 S. Ct. 632, with Wucher *v.* Pizzutti, 276 U. S. 13, 72 L. Ed. 446, 48 S. Ct. 259, 57 ALR 1230, or, where conditions preclude reasonable certainty of actual receipt of notice, and the form chosen is not substantially less likely to bring home notice than other of the feasible and customary substitutes."

The notice required by the statute in the escheat case under consideration clearly failed to conform to the standard set forth in the above quotation, either with respect to the contents of the notice or the place and time of publication thereof.

It was held in the *Central Hanover Bank & Trust Company* case that, in the circumstances there present, notice of the settlement of the account of the trustee was not required to be sent to persons whose names and addresses were unknown to the trustee and that publication of a notice or citation required by the statute, addressed generally to all parties interested in the common trust fund or in such estates, trusts or funds mentioned in the petition,

was adequate as to the persons whose names and addresses were unknown to the trustee.

In the case cited, however, the statute provided for the appointment of a special guardian and attorney for all persons known or unknown, not otherwise appearing, who had or might thereafter have any interest in the common trust fund and also a special guardian and attorney to represent those similarly interested in the corpus. Since the separate trusts were specified in the notice, there was at least a probability that the persons interested in such trusts would know of their interest and would be advised by the notice of the proceedings.

The State Supreme Court also cited, in support of its holding, the cases of *Hamilton* v. *Brown*, 161 U. S. 256, and *Christianson* v. *King*, 239 U. S. 356. In *Hamilton* v. *Brown*, which was a proceeding to escheat land located in the State of Texas, the statute required that *scire facias* be issued to all persons named in the petition, if in possession of or claiming the estate, requiring them to appear and show cause why it should not be vested in the state. The statute further required an order of notice to be published four weeks in a newspaper printed within the state, stating briefly the contents of the petition and requiring all persons interested in the estate to appear and show cause why the land should not be vested in the state. The mere recital of these statutory provisions shows a wide difference between the notice in the case cited and the notice required by the statute here under consideration.

In *Christianson* v. *King County*, which was also a case of escheat of land, the petition showed that no heirs at law of the decedent had been found after diligent search. The decree was made after publication of a notice for four weeks in a local newspaper. The form of notice does not appear in the opinion and was not considered by the court as apparently no objection thereto was made.

In *Cunnius* v. *Reading School District*, 198 U. S. 458, cited in *Mullane* v. *Central Hanover Bank & Trust Company*, the statute required that a notice be inserted for two successive weeks in a newspaper published in the county and also, when practicable, in a newspaper published at or near the place beyond the state where, when last heard from, the supposed decedent had his residence.

The State Supreme Court, in its opinion, said "The circumstances did not permit of a more effective notice." If the Legislature had intended to comply with due process of law, it could readily have required the publication of a notice addressed to the claimants specifying the claim which each had, stating the nature of the proceeding and the basis of the state's claim to escheat. In fact, the additions to the notice, not required by the language of the act or even by the State Supreme Court's additions to the act, did not include any statement of the reason why escheat was claimed.

The State Court sought to buttress its finding that the notice was sufficient by the statement that the judgment did not terminate the right to rebut the presumption of abandonment and claim the *res*. This statement is based upon Section 18 of the statute.

Whether the construction placed upon Section 18 of the act by the court or the construction placed upon it by the dissenting opinion is correct, it is true that, with respect to the shares of stock which are escheated, the owner who succeeds in having the decree opened receives not his shares of stock but merely the proceeds of sale thereof, less the counsel fee allowed to the counsel for the state, the fees of the escheator and the costs of the proceeding or the portions of such reductions allocated by the court to his shares of stock.

The Statute and the Procedure Thereunder Violates Article I, Section 10, Paragraph 1 of the Constitution of the United States in That It Impairs the Obligations of the Contracts of the Claimants.

All of the claims in question are based upon contract. But for the judgment in this case, the contracts would be enforceable against the Standard Oil Company, the petitioner herein. If, as we contend, the judgment in this case is invalid because it violates Article I, Section 10, paragraph 1 of the United States Constitution, it will not protect the Standard Oil Company against those claims if asserted against it. The judgment attempts to divest the right of the claimants to enforce their contracts. Because of the inadequacy of the notice and the failure to afford the claimants an opportunity to be heard in the proceeding and to assert their claims, the procedure provided by the act is not a reasonable substitute for the remedy which the claimants had prior to the entry of such judgment.

This case was instituted by the State of New Jersey as a test case. More than one hundred similar cases are now pending in the Superior Court of New Jersey, in which New Jersey corporations are defendants. It is, we believe, of importance to the State and to the defendants that the Constitutional questions involved be determined by the United States Supreme Court.

Cases Sustaining Jurisdiction

1. Timeliness of Appeal. The Petition of Appeal was presented on the 21st day of September, within ninety days from the entry of the judgment of the New Jersey Supreme Court September 27, 1950, which was entered on June 27, 1950, *Department of Banking* v. *Pink*, 317 U. S. 264.

2. Jurisdiction to entertain an appeal from the decision of a State Court of last resort on the ground that a State

statute violates the due process of law provision of the Fourteenth Amendment to the Constitution of the United States where the State court has determined that such statute does not violate such provision. *Connecticut Mutual Life Insurance Company, et al.,* v. *Moore,* 333 U. S. 541; *Mullane* v. *Central Hanover Bank & Trust Company,* 94 U. S. S. Ct., L. Ed. 578; *Security Savings Bank* v. *State of California,* 263 U. S. 282; *Anderson National Bank* v. *Luckett,* 321 U. S. 233.

3. Jurisdiction to entertain an appeal from the decision of a State Court on the ground that a State statute violates Article I, Section 10, paragraph 1, of the Constitution of the United States, where the decision of the State Court has determined that such statute does not violate such constitutional provision. *Williams* v. *Louisiana,* 103 U. S. 637; *Hurbert* v. *New Orleans,* 215 U. S. 170, 175; *Atlantic Coast Line* v. *Phillips,* 332 U. S. 168, 170; *Connecticut Mutual Life Insurance Company* v. *Moore,* 333 U. S. 541.

Therefore, the appellant, Standard Oil Company, respectfully submits that the Supreme Court of the United States has jurisdiction of this appeal by virtue of Section 1257 of Title 28 of the United States Code.

Respectfully submitted,

STRYKER, TAMS & HORNER,
By JOSIAH STRYKER.

JOSIAH STRYKER,
Counsel.

EXHIBIT A

SUPERIOR COURT OF NEW JERSEY, CHANCERY DIVISION, MERCER COUNTY, DOCKET 169/14

BETWEEN THE STATE OF NEW JERSEY by THEODORE D. PARSONS, Attorney General of the State of New Jersey, *Plaintiff*,

and

STANDARD OIL COMPANY, *Defendant*

Civil Action on Final Hearing

Conclusions

Mr. Emerson L. Richards, Special Deputy Attorney General, for the State,

Messrs, Stryker, Tams & Horner (Mr. Josiah Stryker and Mr. Baldemar Beeken, of counsel), for the defendant.

JAYNE, *J. S. C.*:

This action will be recalled as a proceeding instituted in pursuance of the terms of a legislative enactment entitled "An Act providing for the escheat of certain unclaimed personal property," and its amendments (R. S. 2:53-15 to 2:53-32, N. J. S. A.), in which on March 3, 1949, I filed a preliminary memorandum concerning certain controversial points, the legal character of which I was requested to consider in abstract form. 64 A. 2d 386. To avoid redundancy of discussion and unnecessary reproduction of citations, the present memorandum is to be regarded as an augmentation of the antecedent opinion.

I heretofore resolved that the so-called Escheat Act is not manifestly unconstitutional on its face. I adhere to that determination. I again conclude as an abstract question that where a right of action has become barred under the provisions of our statutes of limitations, the statutory defense in its ordinary application is, in the existing law of the State of New Jersey as announced by our adjudications and in its relation to the persons implicated, a vested right extinguishing the debt or legal obligation. See citations in 64 A. 2d 386.

Notwithstanding the illumination produced by the stipulation of facts, the cardinal point of controversy in the present proceeding continues to attach to the defensive averment that in consequence of the tolling of the statute of limitations the defendant under the authority of our adjudications has acquired a vested right and title to most of the alleged escheatable property.

I unhesitatingly acknowledge that the courts of many other states have conceived such statutes to be mere limitations of remedy and not efficacious either to destroy or to transpose fundamental rights. Nevertheless, it seems to me that the rejection, displacement or inversion of the principle enunciated in our State by Chief Justices Beasley and Gummere, favored by Justice Bradley of the United States Supreme Court and concurred in by former Justices Dixon, Van Syckel, Depue, Magie, Garrison, Swayze, Parker, Trenchard, Bergen, Minturn, and Kalisch, is a proposal more properly to be cogitated and resolved upon by our court of last resort.

It is the insistence of the defendant that:

> "All of the said claims aid all choses in action with relation thereto accrued and arose against the defendant more than six years prior to the passage of the Escheat statute, and that any right of action thereon was barred by the Statute of Limitations before the enactment of the Escheat statute;
>
> "By virtue of the bar of the Statute of Limitations, the said claims and choses had become legally extinguished and legally unenforceable against the defendant;
>
> "At the time of the enactment of the Escheat statute, the defendant had a vested right in the defense of the Statute of Limitations as to all such claims;
>
> "The legislature had no power to divest the said vested right to the defense of the Statute of Limitations, whether the legislature did so in the interest of the original claimants or in the interest of the State of New Jersey;
>
> "If the Escheat statute is construed so as to provide for the escheat of such claims to the State of

New Jersey, the said Act violates both the New Jersey Constitution and the Constitution of the United States, in that it violates the right of the defendant to acquire, possess and protect property and that it takes the property of the defendant for the public use of the State of New Jersey without compensation and that it deprives the defendant of its property without due process of law."

Obviously, if the principle which is presently regarded as establishing a vested right in the debtor with its consequent annihilation of the debt and in some instances its resultant transmission of title were to be abrogated, my present problem would materially evaporate.

At the argument I was fervidly invited to realize that to sustain the claim of the State against the defendant's invocation of the effectiveness of the statute of limitations would visit no prejudicial injury upon the defendant, whereas to confirm the defendant's contention upon that issue would in effect enable the defendant to aggrandize its private resources by bequests of unearned and undeserved assets.

I do not decline to envision the equitable aspects of the subject. In the composition of the Escheat Act of present interest the legislature expressly conferred upon the former Court of Chancery exclusive jurisdiction over the contemplated proceedings, presumably with the intention that such proceedings would be governed by the principles and practices of a court of equity.

The jurisdiction of the former Court of Chancery has been transferred in its entirety to this court to be exercised primarily by its Chancery Division. *Steiner* v. *Stein*, 2 N.J. 367, 66 A. 2d 719.

True, the rule has been familiar to us that if the subject matter in controversy in a Court of Chancery is of an equitable nature, not cognizable in a court of law, statutes of limitations although not ignored have no obligatory application, but the court will instead apply the doctrine of laches according to its discretion, regulated by the peculiar circumstances and by the pertinent precedents.

Implicit in the terms and provisions of the Escheat Act

is the persuasion of the legislature that the retention of abandoned and unclaimed personal property for an ultimate and eventual disposition to the beneficial owner has constituted a relationship in the nature of a trust, hence the investment of jurisdiction in equity.

True, also, equity jurisprudence is not bare of a remedy in the prevention of unjust enrichment. The constructive trust, although essentially a remedial concept, has supplied the formula through which in a variety of harsh and unfair situations the conscience of equity finds expression.

But here it may be answered that the enrichment which a debtor may derive from the operation of the statute of limitations is not inimical to the public policy that recommends and sustains such statutes, and thus any resulting advantage therefrom to the debtor is not to be regarded as unjust or inequitable. Habitually in the consideration of strictly legal rights, courts of equity whether in voluntary obedience to or upon analogy recognize the limitations at law. For examples, if a legal title would, in ejectment, be barred by adverse possession of twenty years, courts of equity will respect the limitation. If a mortgagor has been in possession of the mortgaged premises for a like span of time without any acknowledgment of the debt, equity will presume that the mortgage indebtedness was paid. In the cases just hypothesized can the State, despite the limitations, seize by escheat the lands subject to the consummated adverse possession or acquire and collect the mortgage for the reasons that the whereabouts of the record title holder of the land and in the latter case of the mortgagee has been unknown for a specified period of the past? Can the State now lawfully acquire by escheat every heretofore outlawed debt throughout its territorial jurisdiction and demand its payment free from the immunity bestowed upon the debtor by existing statutes and adjudications? Of course, it is not to be presumed that the State if it has such power will exercise it unwisely or arbitrarily.

My attention has been attracted to the section of our statute enacted in 1906 *(R. S. 2:24-24, N. J. S. A.)* relative to the amount of interest to be recovered on "any claim

or demand which has been or shall become barred by the running of the statute of limitations, and *shall have been or shall be revived thereafter by legislative enactment* * * *" (Italics mine.) The citation is not influential because whatever may have been the contemplations of the legislature, our Court of Errors and Appeals, for example, in *Ballantine & Sons* v. *Macken*, 94 N. J. Law 502, 503, 110 Atl. Rep. 910, declared: "The rule is institutional and fundamental that a party who has become released from a demand, by the operation of the statute, is protected against its revival by a change in the limitation law, the defence of the statute being considered a vested right, which cannot be taken away by legislation without violating the inhibition of the fourteenth amendment to the federal constitution." (Perhaps more accurately, the right to acquire and possess property clause.)

It must be immediately recognized that all of our decisions with concordant import have denied the legislature the opportunity constitutionally to revive as between private individuals the debt that has been extinguished by the applicable tolling of the statute of limitations. And so along most all of the passageways of thought concerning the effect of the limitation upon the rights of the private parties involved, we soon come upon the image of the vested right.

I frankly confess my inability to comprehend the power of the State to acquire by means of escheat vested rights of cognizable ownership as distinguished from abandoned rights and interests. The very spine of the doctrines of escheat and *bona vacantia* is composed of the constitutent fact that no one exists who has ownership of the specified property.

It has been said that when you get half way into the woods, you then start coming out. And so, diverging now to pursue an excursive view of the subject, attention promptly focuses upon the proposition that although the defendant has acquired by statute a vested right and title to the intangible property to the exclusion of the unenforceable claims and demands of the former owners who have been and are now incapable of ascertainment and

identification, yet the defendant has not in such circumstances also achieved a vested right and title to the property immune from recovery by the State in the pursuit of its governmental power. To sustain that conclusion it is necessary to resolve that the statute of limitations invoked by the defendant had no current application to the ever extant and subsisting sovereign prerogative of the State, and that the tolling of the statute although effectual as hereinbefore indicated between the debtor and creditor was always subject and subordinate to the governmental right.

In the preliminary memorandum I quoted from my opinion, in *Trustees, &c., Public Schools* v. *Ott & Brewer Co.*, 135 N. J. Eq. 174, 37 A. 2d 832, the rule that a statute of limitation should not be construed to encircle the government unless it is manifest from the mischief to be reached, the express language employed or by necessary implication therefrom, that the government was in the contemplation of the legislature. I do not understand that the defendant impugns that rule or its utilization in the consideration of the present proceeding, but it projects the contention that the right of the state to recover the debt or chose in action is derivative and that where as between the debtor and creditor the debt or cause of action has become extinct, nothing remains due the creditor to be captured by the State in pursuance of its undeniable power. But a perceivable refutation of that argument is a determination that the right of recovery by the State in a proceeding in the nature of escheat is distinguishable and independent of the rights of the individuals and that such isolated prerogative right did not become extinct. The contributing point is that the State acts initially as a conservator of the abandoned property, not as a party to a contract, and that the sovereign right cannot be demolished or suppressed by the acts of the individual debtors and creditors.

It is asserted that the power to escheat is prerogative in character and is inherent in the sovereignty of the people, and that it is not a creature of the legislature. The impression is that the Escheat Act merely authenticates and regulates the exercise of the power. The historical authorities indicate that the State had no common law proprietary interest in abandoned and unclaimed personal

property. It is perhaps more accurate to identify the right of the State in such an undertaking as an exercise of the police power.

It is, however, in the course of this rationalization that the Deputy Attorney General places the possession of the alleged escheatable property in its relation to the prerogative right of the State in the equitable category of a quasi trust for the eventual surrender and delivery of the abandoned and unclaimed property to the public if and when proceedings to that end are authoritatively inaugurated by the State.

It seems entirely plausible to infer that the legislature never intended that statutes of limitations of the import and tenor here invoked should in any wise abate the pursuit by the State of its sovereign power to escheat unclaimed and abandoned property. The public policy sustaining such statutes in their application to dealings between individuals is familiar. The duration of the limitational period is definitely appurtenant to the object of the enactment. Envisioning the power to escheat tangible and intangible personal property, our legislators were undoubtedly conscious of the relatively lengthy span of time the lapse of which would reasonably generate a presumption of abandonment and failure of ownership. The interrelation of the limitational period and the statutory object has always been comprehended.

And so it is advocated by the Deputy Attorney General that the State possesses a supreme right (subject only to the characteristic impediments applicable to the exercise of the police power) to salvage for the public welfare all unclaimed and abandoned debts and cognate obligations which under the verification of proof or confession it is evident that the debtors and obligors have not in fact discharged.

In this and in my associated preliminary memorandum I have intentionally endeavored to exhibit all of the courses and processes of reasoning, *pro et contra*, to which my deliberations have been directed relative to the foremost controversial point. Perhaps I have inordinately magnified

its debatable substance and too noticeably plowed the ground for ensuing cultivation in the appellate tribunals.

Where, however, the diversities of legal argumentation concerning the constitutionality of a statute and the exercise of a prerogative power in pursuance thereof approximate an equiponderance, it is in accord with recognized policy for the court to resolve the issue in favor of validity. I shall act accordingly in the determination of the aforesaid issue.

It is consequently unnecessary to discuss the application of the statute of limitations to the respective classes of intangible property here sought to be escheated.

I shall therefore proceed to consider the additional points presented for decision. I approach them with some precursory observations. The present action is essentially a proceeding *quasi in rem* in which the defendant company has filed an answer. No other claimant has sought to enter an appearance. Indeed, there is no proof of the existence of any other claimant. The admitted lack of knowledge of the whereabouts of any claimant during the specified period and the apparent abandonment of the designated property during a like span of time constitute under the Escheat Act a confirmatory presumption that there is no claimant.

If there is any such, he is privileged to proclaim his rights during the progress of this action and within two years succeeding the entry herein of the final judgment. The defendant protests that the right of the individual to make claim is reduced to a privilege dangling insecurely from the discretion of the court. In equity, remedies are nonetheless remedies because they are discretionary, and an abuse of discretion is not reasonably to be contemplated or condoned. A claimant has no vested right in a particular remedy if a substantial remedy remains or is substituted. *Henderson* v. *Weber*, 131 N. J. Law 299, 301, 35 A. 2d 609, appeal dismissed, 332 U. S. 713, 88 L. ed. 1555, 64 S. Ct. 1270.

The defendant corporation has successfully argued before me that where the statute of limitations has tolled, the chose in action against it has been extinguished. What

then is the property right of an unknown claimant in the present case (except the 12 shares of stock) that the defendant can with any propriety and practicability volunteer to protect against alleged unconstitutional invasion? I know not, unless the existence of the sovereign power to acquire abandoned and unclaimed property is controverted. The treatment and determination of the right of a claimant in respect to the escheat are subjects not now before this court.

The defendant is certainly free to defend its own rights. In my preliminary memorandum which is inhabited by most of the pertinent and authoritative citations, I have referred to such adjudications as *Anderson National Bank* v. *Luckett*, 321 U. S. 233, 88 L. Ed. 692, 64 S. Ct. 599, and *Security Bank* v. *California*, 263 U. S. 282, 68 L. Ed. 301, 44 S. Ct. 108, which seem to me definitely to hold that if the prerogative power of the State is exercised under the authority of the legislature and in accordance with adequate and reasonable statutory terms and requirements, and it is judicially determined in pursuance thereof that the State is lawfully entitled to the property which in the given case is comprehended by the designated class of escheatable property, the surrender and delivery of the property to the State discharges the obligation and liability of the defendant to the unknown claimants, and the legislation and the pursuit of its object are not in relation to the debtor and creditor violative of the contract and due process clauses of the constitution. To further allay the defendant's apprehensions of double liability, I point to *R. S. 2:53-23.1, N. J. S. A.*; *R. S. 2:53-31, N. J. S. A.*; *Philadelphia Electric Company* case, 352 Pa. 457, 43 A. 2d 116.

Counsel for the defendant perhaps approve of the literal text of the preceding paragraph, but they complain that our regulatory statute fails to require reasonable and adequate notice to the unknown and unascertained claimants in consequence of which the defendant would not be released from double liability. Anent that criticism I previously remarked: "Frankly, I regard the impoverished provisions pertaining to the notice to be given as an infirmity in the act, but not a mortal one." I again invite attention to the relevant comments contained in *Anderson National Bank* v. *Luckett*,

supra; Security Bank v. *California, supra; Hyman* v. *Muller*, 1 N. J. 128; 62 A. 2d 221. I was not unaware of the decision in *Wuchter* v. *Pizzutti*, 276 U. S. 13, 72 L. Ed. 446, 48 S. Ct. 259, 57 A. L. R. 1230, which seems to me to be irrelevant and inapplicable to the point here in question, for here it will be observed that the section of our Escheat Act (*R. S. 2:53-21, N. J. S. A.*), properly construed, requires the notice in its essentials to be "approved by the court," and requires it to be published "in a manner directed by the court." Procedural enactments relating to statutory judicial proceedings not uncommonly direct that notice, its contents and amplitude, shall be served or published as the court shall prescribe.

The Act affords a claimant a day in court. The enactment in itself is an announcement to persons having property within the State of the conditions under which the specified classes of property will be presumptively deemed abandoned and subject to transfer to the State. Statutory proceedings relating to the seizure of property rights by the State in the interest of the public welfare which by later resort to the courts secure to the parties affected a suitable opportunity to be heard, do not deny due process. *Anderson National Bank* v. *Luckett, supra.*

There remains for consideration the additional overture that the alleged intangible personal property does not have a situs in this State and therefore is not susceptive of seizure in this proceeding. For immediate interest the point must relevantly be reduced and confined to the consideration of the situs of abandoned intangible personal property of the particular character herein embraced in its relation to the power of this State to recover the property in circumstances evidenced by the stipulated facts.

It is acknowledged that the defendant attained its corporate origin and existence in this State and has continuously maintained its principal office in this jurisdiction at which its stockholders' meetings are regularly held and at which its registered agent may be found upon whom process is to be served in civil actions against the company. New Jersey is the defendant's habitation or domicile.

It is the general jurisdictional rule that debts, choses in action, and kindred claims are determined to be situate

where the debtor or other person resides against whom the claim exists, that is, in the jurisdiction in which such choses and claims are properly enforceable and recoverable, regardless of the locations of the debtor's physical properties and of his major business activities. *Amparo Mining Co.* v. *Fidelity Trust Co.*, 75 N. J. Eq. 555, 558, 73 Alt. Rep. 249; *Pennington* v. *Fourth National Bank*, 243 U. S. 269, 61 L. Ed. 713, 37 S. Ct. 282; *Philadelphia Electric Company* case, *supra;* 31 Harvard Law Review 905.

In an escheat proceeding such as this in which the residence, domicile, whereabouts and, indeed, existence of an owner of the *res* are unknown and the *res* is circumstantially presumed to be *bona vacantia*, the application of the general jurisdictional rule to the situs of an escheatable *res* within the class here described seems to be manifestly sensible, just, and pragmatical.

It is to be noticed that the opportunity afforded by our statute to obtain refunds from the State is available equally to non-resident and resident claimants.

Apparently the motive of the defendant in projecting this supplementary defensive argument is its imaginative apprehension that some other state may perchance some time in circumstances subsequently discovered undertake to escheat to itself the same property now to be awarded to New Jersey. The future, however wisely contemplated, remains a fairyland. The attempted solution of a preconceived legal problem of invisible characteristics is nothing more than a highly speculative and experimental exercise in which courts discreetly decline to indulge.

The United States Supreme Court in a like situation in its consideration of the New York Abandoned Property Law stated: "The problem of what another state than New York may do is not before us. That question is not passed upon." *Connecticut Mutual L. Ins. Co.* v. *Moore*, 333 U. S. 541, 548, 92 L. Ed. 641, 68 S. Ct. 682. In the same case Justice Frankfurter advocated the propriety of awaiting "the refining process of a defined contest," and until then to decline to "peck at the problem in an abstract, hypothetical way." I shall in this regard follow the footprints.

The judgment of this court will accordingly go in favor of the plaintiff.

Counsel are requested to compose and submit to me for approval a proposed final judgment declaratory of the conclusions herein expressed in their appropriate application to the circumstances of this case.

EXHIBIT B

Final Judgment

(Filed December 7, 1949.)

This cause came on to be heard on June 1, 1949, and was argued by counsel, and, upon consideration thereof,

It is, this 7th day of December, 1949,

Ordered, Adjudged and Decreed, that the following personal property be and is hereby escheated to the State of New Jersey, to wit:

a. Unpaid dividends declared upon the shares of capital stock of Standard Oil Company, aggregating $6,238.01, listed on the records of Standard Oil Company set forth in "Exhibit 1" and "Exhibit 2" of the Stipulation of Facts filed in the within proceedings and made part of the record at the trial of this cause;

b. Twelve shares of the common stock of Standard Oil Company, having an aggregate par value of $300.00, listed upon the records of the Company as set forth in "Exhibit 3" of the Stipulation of Facts filed in the within proceedings and made part of the record at the trial of this cause;

c. Unpaid wages of former employees of Standard Oil Company whose services to the company were rendered in the State of New Jersey, aggregating $31,381.08, listed upon the records of the company as set forth in "Schedule A" attached to the answer of Standard Oil Company filed in this cause, and incorporated in the Stipulation of Facts filed in the within proceedings and made part of the record at the trial of this cause;

d. Amounts withheld from wages of former employees of Standard Oil Company for the purchase of Liberty Bonds, aggregating $1210, listed upon the records of the company as set forth in "Exhibit 4" of the Stipulation of Facts filed in the within proceedings and made part of the record at the trial of this cause;

e. The amounts of unpresented commercial bank checks issued by Standard Oil Company, aggregating $8,561.62, listed upon the records of the company as set forth in "Exhibit 5" of the Stipulation of Facts filed in the within proceedings and made part of the record at the trial of this cause, and as set forth on page 27 of the said Stipulation of Facts;

f. Moneys withheld by Standard Oil Company on account of debenture coupons of its Twenty Year 5% Debenture issue of 1926, aggregating $3145, listed upon the records of the company as set forth in "Schedule A", attached to the answer of Standard Oil Company filed in the within cause and incorporated in the Stipulation of Facts filed in the within proceedings and made part of the record at the trial of this cause.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED, that the defendant, Standard Oil Company, pay to the Treasurer of the State of New Jersey the aggregate amounts escheated as aforesaid and issue in the name of and deliver to the Treasurer of the State of New Jersey certificates for twelve (12) shares of its common stock in lieu of the certificates for said number of shares mentioned in "Exhibit 3" of the above mentioned Stipulation (which last mentioned certificates are not in the possession or under the control of the defendant), and that the Standard Oil Company make all necessary entries upon its books and records of the issuance in the name of and delivery to the Treasurer of the State of New Jersey of the aforementioned certificates, and of title to the said shares of stock in the Treasurer of the State of New Jersey.

It is further ordered, adjudged and decreed, that the fees of Emerson L. Richards, Esq., the Counsellor who has prosecuted the escheat in this Court, be fixed in the amount of $6,500, and that his expenses be fixed at $100.35 according to Paragraph 23 of said Statute, and that the fees of Irving H. Kutcher, as escheator, be fixed at $2,540.78, as provided in Paragraph 23 of said Statute, which fees and expenses are to be deducted from the moneys and personal property received by the State Treasurer as provided in such Act, and by him paid to the aforesaid Counsellor and Escheator.

WILFRED H. JAYNE,
J. S. C.

EXHIBIT C

SUPREME COURT OF NEW JERSEY, NO. A-134—SEPTEMBER TERM, 1949

STATE OF NEW JERSEY, by THEODORE D. PARSONS, Attorney General, *Plaintiff-Respondent,*

vs.

STANDARD OIL COMPANY, *Defendant-Appellant*

OPINIONS OF THE COURT

Argued May 8, 1950; decided June 27, 1950.

On appeal from the Superior Court, Chancery Division, whose opinions are reported in 2 N. J. Super. 442 and 5 N. J. Super. 460, certified on defendant's motion.

Mr. Josiah H. Stryker argued the cause for appellant. Messrs. Stryker, Tams & Horner, Attorneys.

Mr. Emerson Richards argued the cause for the State. Mr. Theodore D. Parsons, Attorney General, on the brief.

The opinion of the court was delivered by HEHER, *J.*:

The primary question here is the constitutional sufficiency of ch. 155 of the Session Laws of 1946, as amended by ch. 357 of the Session Laws of 1947 (N. J. S. A. 2:53-15,

et seq.), providing for the escheat in certain circumstances of "moneys, negotiable instruments, choses in action, interest, debts or demands due to the escheated estate, stocks, bonds, deposits, machinery, farm crops, live stock, fixtures, and every other kind of tangible or intangible property and the accretions thereon," but excluding "real property or property" in *custodia legis* and "unclaimed bank deposits" made subject to escheat by ch. 199 of the Session Laws of 1945, N. J. S. A. 17; 9-18, *et seq.*

The statute escheats to the State such personal property "within this State" of one who has died, or shall die, intestate, "without heirs or known kindred, capable of inheriting the same, and without leaving a surviving spouse"; the personal property "within this State" of an "owner, beneficial owner, or person entitled" thereto who "has been or shall be and remain unknown for the period of fourteen successive years," or whose "whereabouts * * * has been or shall be and remain unknown for the period of fourteen successive years"; and personal property "wherever situate" which "has been or shall be and remain unclaimed for the period of fourteen successive years".

Jurisdiction to enter a judgment of escheat originally granted to the old Court of Chancery, is now vested in the Chancery Division of the Superior Court. It is invoked by a petition setting forth the jurisdictional requisites. The court is enjoined to "make an order requiring the defendant to answer the petition within a time therein limited." And there is provision for "such other directions" as the court may deem appropriate "for the speedy determination of the cause, the protection of the property, or for the disclosure of information pertinent to the prosecution of the cause." Provision is also made for service of a copy of the petition and order "upon the defendant in the manner provided in the said order;" and the defendant is directed, within the time limited, to answer the petition and comply with the order. Upon the filing of the defendant's answer, and his compliance with the order, it is incumbent upon the court, by a further order, to designate a time and place for the hearing of the petition. A "notice" summarizing "the order designating the time

and place of hearing, as approved by the court," shall then "be published in a manner directed by the court and shall also be published once a week for three successive weeks in a newspaper of general circulation designated by the court," provided that where the value of the personal property "of any one owner is less than $50, publication may be dispensed with if the court so directs." The notice shall direct that "any person who may claim to be entitled" to the property, or any interest therein, shall file his claim in the general form of an answer at least five days prior to the date fixed for the hearing. If no "answering pleadings" be filed within the time prescribed "by order of the court," the court may proceed upon the petition alone, and enter judgment declaring that the property "has escheated to the State." Upon the entry of a judgment of escheat, the person "in possession" shall deliver the property to the State Treasurer; and the Treasurer is enjoined to convert the property into money after "public notice" and deposit the proceeds in the State Treasury.

The judgment of escheat, by express provision, operated "as a full, absolute and unconditional release and discharge of the person having such property in possession or custody from any and all claim, demand, or liability to any person whatever other than the State Treasurer with respect to such property," and is pleadable "as an absolute bar to any action brought against such person with respect to such property by any person other than the State Treasurer."

Any person "whose property may have escheated to the State as provided" in the Act, "or any rightful heir entitled to such property by descent, may, within two years after" the entry of the judgment of escheat, apply for a reopening of the judgment, and "upon proof that" he was "without actual knowledge" of the escheat proceedings and "proof of ownership of such property or the right to possession thereof, the court may in its discretion reopen" the judgment; and "in the event" that the judgment "in part or in whole be revised or amended, the court may direct the State Treasurer to repay such part of the moneys received by the State Treasurer by reason" of the

judgment "to the party or parties in the amended" judgment "entitled to have the same, and upon the entry of such" judgment "the State Treasurer shall repay the said moneys as provided" in the judgment, less the "expenses and charges that may have accrued or been paid out by reason of the entry of the original" judgment.

The judgment under review escheated to the State the following classes of personal property found to be in the possession of the defendant corporation:

(a) Unpaid dividends declared upon shares of its capital stock, aggregating $6,238.01;

(b) Twelve shares of its common capital stock, of the aggregate par value of $300;

(c) Unpaid wages of former employees of the corporation whose services were rendered in New Jersey, aggregating $31,381.08;

(d) Moneys withheld from wages of former employees of the corporation for the purchase of Liberty Bonds, aggregating $1,210;

(e) The amounts of unpresented commercial bank checks issued by the corporation, aggregating $8,561.62; and

(f) Moneys withheld by the corporation on account of coupons of its Twenty-Year 5% Debenture issue of 1926, aggregating $3,125.

The Standard Oil Company is a domestic corporation. It was organized in 1882 under the laws of New Jersey; and it subsists under that franchise grant. It maintains its registered office in Flemington, New Jersey. It is stipulated that the stated items of property have remained unclaimed for more than fourteen successive years prior to the institution of this proceeding, and still remain unclaimed, and that the whereabouts of the owners or persons entitled to the property have remained unknown for a period of fourteen successive years prior to the commencement of this proceeding, and still remain unknown.

The Superior Court concluded that "Implicit in the

terms and provisions of the Escheat Act is the persuasion of the legislature that the retention of abandoned and unclaimed personal property for an ultimate and eventual disposition to the beneficial owner has constituted a relationship in the nature of a trust, hence the investment of jurisdiction in equity;" that while as between the debtor and creditor the debt or cause of action "has become extinct" by the lapse of time prescribed by the statute of limitations, "the right of recovery by the State in a proceeding in the nature of escheat is distinguishable and independent of the rights of the individuals and that such isolated prerogative right did not become extinct;" that the State "acts initially as a conservator of the abandoned property, not as a party to a contract, and that the sovereign right cannot be demolished or suppressed by the acts of the individual debtors and creditors;" that it was not the design of the statute of limitations "to abate the pursuit by the State of its sovereign power to escheat unclaimed and abandoned property;" and that where "the diversities of legal argumentation concerning the constitutionality of a statute and the exercise of a prerogative power in pursuance thereof approximate an equiponderance, it is in accord with recognized policy for the court to resolve the issue in favor of validity," and it is therefore "unnecessary to discuss the application of the statute of limitations to the respective classes of intangible property here sought to be escheated."

I

It is the insistence of the defendant corporation that there was error in construing the Escheat Act as applicable to choses in action barred by the statute of limitations "at the time the right of the State accrued;" and that this construction and application contravenes paragraphs 1 and 16 of Article I of the Constitution of 1844, now paragraphs 1 and 20, respectively, of Article I of the Constitution of 1947.

The argument, in brief, is that the property subject to escheat under R. S. 2:53-17, considered in relation to the definitive terms of R. S. 2:53-15, "is property to which some person is entitled and which is in the possession or custody

of some other person who is to be the defendant in the escheat proceeding;" that in the case of debts, "it is the claim or chose in action which is escheated, not the property of the debtor out of which the chose in action, if enforced, would be satisfied;" that if the unclaimed property is a debt, the State "takes the claim which the owner has * * *, subject to all defenses which the debtor is entitled to assert against the owner who has failed to claim the debt;" and that the defendant has a vested right to interpose the defense of the bar of the statute of limitations which the Legislature is not free to destroy.

It is not to be supposed that the Legislature intended to revive all outlawed debts and demands for appropriation by the State, no matter when the obligation came into being and however long the right of enforcement ceased to exist. The inclusion of "debts or demands due to the escheated estate" in the definition of the "personal property" liable to escheat, embodied in R. S. 2-53-15, is significant of a purpose to reach only choses in action whose obligation had not been extinguished, whether by satisfaction or by the bar of the statute of limitations.

There is a contrariety of view as to whether it is within the legislative competency to restore the means of enforcement of a chose in action rendered unenforceable by the efflux of time fixed by the statute of limitations. It is the settled rule in the Federal jurisdiction that the state exertion of such power is not violative of the Fourteenth Amendment, where the lapse of time has not operated to vest title to real or personal property. *Campbell* v. *Holt*, 115 U. S. 486, 6 S. Ct. 209, 29 L. Ed. 483 (1885); *Chase Securities Corporation* v. *Donaldson*, 325 U. S. 304, 65 S. Ct. 1137, 89 L. Ed. 1628 (1945). The view of the majority in the case of *Campbell* v. *Holt* was that, while one may acquire a superior and paramount title or ownership to tangible property, real or personal, by long and undisturbed possession which is proof against legislative impairment by the removal of the bar of the statute of limitations, debts are on a different footing, chiefly because the statute operates in such cases merely to bar the remedy without destroying the right in *foro conscientiae*. "Time does not pay the debt" it was said, "but time may vest the right of property.

* * * The statute of limitations does not destroy nor pay the debt.'' But this distinction between a vested right of ownership to real and tangible personal property arising out of the statute of limitations and the operation of the statute as a defense to contracts has had no recognition in this State. The principle is embedded in our jurisprudence that where a right of action has become barred under existing law, the statutory defense constitutes a vested right which is proof against legislative impairment. The protection is the same whether the debtor has satisfied the demand or has become released from the obligation by the operation of the statute of limitations.

The principle was expounded in *Ryder* v. *Wilson's Executors*, 41 N. J. L. 9 (S. Ct. 1879). There, Chief Beasley said: "The decisions of the courts, so far as my research has extended, are wholly in accord on this subject, and, with one voice, they declare that when a right of action has become barred under existing laws, the right to rely upon the statutory defence is a vested right, that cannot be rescinded or disturbed by subsequent legislation. Judge Cooley, treating of this subject, in his work on Constitutional Limitations, thus states his views: 'As to the circumstances under which a man may be said to have a vested right to a defence, it is somewhat difficult to lay down a comprehensive rule. He who has satisfied a demand, cannot have it revived against him; and he who has become released from a demand by the operation of the statute of limitations, is equally protected. In both cases, the right is gone, and to restore it, would be to create a new contract for the parties—a thing quite beyond the power of legislation.' Const. Lim. 369. And how completely the doctrine thus declared is a legitimate deduction from the authorities, will very plainly appear by a reference to the numerous cases collected by this same author, in his note on page 368.'' This doctrine was accepted by the old Court of Errors and Appeals in *Moore* v. *State*, 43 N. J. L. 203 (E. & A. 1881). Mr. Justice Dixon cited with approval cases holding that "laws never deliberately take away all remedy without an intention to destroy the right.'' It was deemed to be the settled rule that when a right of action is barred by a statute of limitations, it cannot be revived by act of

the Legislature. Mr. Justice Van Syckel, in his dissenting opinion (*Ibid.* 248), said: "A right of action is a property right which may be sold and assigned. Therefore, after the bar has attached, an act of legislation which revives the right to sue, is an act to vest property in one at the expense of another." The principle was reiterated by the Court of Errors and Appeals in *Plahn* v. *Givernaud*, 85 N. J. E. 143 (E. & A. 1915), and in *Ballantine & Sons* v. *Macken*, 94 N. J. Eq. 502 (E. & A. 1920), and by this court in *Shade* v. *Colgate*, 3 N. J. 91 (1949).

We conceive the New Jersey rule to be grounded in sound reason and principle. The statute of limitations is one of repose. As said by Mr. Justice Jackson in *Chase Securities Corporation* v. *Donaldson, supra*, such statutes "are practical and pragmatic devices to spare the courts from litigation of stale claims, and the citizen from being put to his defense after memories have faded, witnesses have died or disappeared, and evidence has been lost." While it has been the generally accepted rule that a statute of this class operates on the remedy merely and does not extinguish the right, it would seem that the destruction of the remedy reduces the "right" to a mere moral obligation sufficient only in the law to sustain a new promise without an independent consideration. Our rule perceives no essential difference between the vesting of rights to real and tangible personal property under a statute of this class and its operation as a defense to contracts. The abrogation of the remedy is equally a violation of the right, for a right without a remedy is a mere shadow. The difficulty was recognized in the *Chase Securities Corporation* case. It was found unnecessary to resolve the controversy as to the true rule. Such statutes were considered representative of "a public policy about the privilege to litigate" whose shelter do not constitute "a 'fundamental' right or what used to be called a 'natural' right of the individual," but whose pleas are "good only by legislative grace" and are "subject to a relatively large degree of legislative control," and are therefore not within the operation of the Fourteenth Amendment, which "does not make an act of state legislation void merely because it has some retrospective operation." The essence of the holding was

that "it cannot be said that lifting the bar of a statute of limitations so as to restore a remedy lost through mere lapse of time is *per se* an offense against the Fourteenth Amendment."

Under our law, the right to interpose the bar of the statute of limitations to actions in contract of this class is a vested property right which the law-making body may not abrogate or impair. It is fundamental that the denial of the remedy affects the substance of the right in the constitutional sense. *Henderson* v. *Weber*, 131 N. J. L. 299 (E. & A. 1944), appeal dismissed 332 U. S. 713, 64 S. Ct. 1270, 88 L. Ed. 1555 (1944). When the remedy is taken away, the right ceases to exist.

This conception of the bar of the statute of limitations as a vested right of defense beyond legislative impairment was not abrogated or modified by the Constitution of 1947. The pertinent provisions of the Constitution of 1844 were reenacted without substantial change; and it is to be presumed that their retention constituted the adoption of the quality and meaning accorded to them by the long-settled judicial construction. *State* v. *DeLorenzo*, 81 N. J. L. 613 (E. & A. 1911); *Commonwealth* v. *Reeder*, 171 Pa. 505, 33 Atl. 67 (1895). Compare *Cook* v. *Bennett Gravel Co.*, 90 N. J. L. 9 (S. Ct. 1917); *Ross* v. *Miller*, 115 N. J. L. 61 (S. Ct. 1935); *State* v. *Moresh*, 122 N. J. L. 77 (E. & A. 1939).

There is no substance to the contention that under the Constitution of 1947, the escheat act "limits the operation" of the statute of limitations, "even to the point of divesting" an accrued right of defense under its provisions. The argument is that these statutes, "having lost all force and vitality upon the abrogation of the Constitution of 1844" by the adoption of the Constitution of 1947, "again came into full force and effect simultaneously by virtue of their wholesale reenactment of Paragraph 3 of the new Constitution," and so they must be "read together and reconciled," and therefore the escheat act is not "subject in any manner to the statute of limitations." But the mere continuance of these statutes by constitutional fiat is not indicative of a purpose to abrogate vested rights to defenses permissible under the statute of limitations. There

is no suggestion of a legislative design by the original enactment, to annul the bar of the statute of limitations and revive in favor of the State a debt or demand that *inter partes* had lost its vitality by the operation of that statute. The Constitution of 1947 does not give the statute a radically different quality and meaning.

In modern usage "escheat" signifies the falling of property to the sovereign for want of an owner; and this category embraces not only property which has no other owner, but also property whose owner or whose owner's whereabouts is unknown. Under the common law of England escheats came to be classified as "another branch of the king's ordinary revenue." Blackstone's Comm. 302. What was originally an incident of tenure is now an incident of sovereignty. *Matthews* v. *Ward*, 10 Gill. & J. (Md.) 443, 451: *In re Melrose Avenue*, 234 N. Y. 48, 136 N. E. 235 (1922). The doctrine of escheat, at the early common law operative only upon that which was the subject of tenure, since it related to the reversionary right of the lord to take for want of a tenant, was eventually extended to include personal property, tangible and intangible. The principle was that the right to take that which belonged to no one appertained to the Crown, as *jure regalia*. *Dyke* v. *Walford*, 5 Moo. P. C. 434, 13 Eng. Rep. Full Reprint 557. The Crown steps in to take the property because it is vacant. Property described as *bona vacantia* is taken or assumed by the State, as its own. Property of this class falls "to the Crown as a matter of right in the exercise of its sovereign power." Re Barnett's Trusts (1902), 1 Ch. (Eng.) 847, 3 B. R. C. 198. "In personal estates, which are allodial by law, the King is last heir where no kin." Lord Mansfield in *Burgess* v. *Wheate*, 1 W. Bl. 123, 96 Eng. Rep. Full Reprint 67, 10 Eng. Rul. Cas. 614 (1884). Property escheats to the State as part of the common ownership. *Hamilton* v. *Brown*, 161 U. S. 256, 16 S. Ct. 585, 40 L. Ed. 691 (1896); *Sands* v. *Lynham*, 27 Grat. (Va.) (1876), 291, 295. "With tenure abolished, succession is by like right whether the subject of escheat is personal or real." *In re Melrose Avenue*, *supra*. The policy of the State's superior right under the doctrine of *bona vacantia* was described by Blackstone as the avoidance of "that strife and contention, which the

mere title of occupancy is apt to create and continue, and to provide for the support of public authority in a manner the least burthensome to individuals." Blackstone's Comm. 298. The State has the same dominion over intangible property that it has over tangible property. *Security Savings Bank* v. *California*, 263 U. S. 282, 44 S. Ct. 108, 68 L. Ed. 301 (1923); *Anderson National Bank* v. *Luckett*, 321 U. S. 233, 64 S. Ct. 599, 88 L. Ed. 692 (1944); *Connecticut Mutual Life Insurance Co.* v. *Moore*, 333 U. S. 541, 68 S. Ct. 682, 92 L. Ed. 863 (1947); *Roth* v. *Delano*, U. S. , S. Ct. , 94 L. Ed. (1949) (338 U. S. 226).

It is a corollary of the foregoing principles that where all remedy upon the intangibles has been barred by the statute of limitations, there is no property to escheat under the act now before us. The State's right is purely derivative; it takes only the interest of the unknown or absentee owner. If the remedy has been extinguished by the statute of limitations, the State is under like incapacity. The State takes only the creditor's right; it cannot create or revive an obligation that had no existence or had become extinct. *The King* v. *Morrall*, 6 Price 24, 146 Eng. Rep. Full Reprint, 730 (Exchequer 1818). The principle was applied in *Lambert* v. *Taylor*, 4 B. C. 138, 107 Eng. Rep. Full Reprint, 1010 (K. B. 1825). Here, defendant invokes the bar of the statute of limitations; and where that defense is sufficient in law, there is no property subject to escheat.

The subject matter of categories (c), (e), and (f) do not constitute property subject to escheat.

II

Our next inquiry is as to whether the unpaid dividends declared on the common capital stock of the defendant corporation constitute rights of property which have not been rendered unenforceable by the operation of the statute of limitations.

The contention is that when a declared dividend becomes payable to the relation of debtor and creditor comes into being, and the "debt" is recoverable "in *assumpsit* which is an action in the nature of an action on the case," a remedy barred under R. S. 2:24-1 after the lapse of six years from the accrual of the cause of action.

Prior to 1918 the total amount of the declared dividends was deposited by the corporation in the National City Bank of New York, in a dividend disbursing account in the name of the corporation. Individual checks for the dividends were drawn by the corporation against this account to the order of the stockholders, and mailed to the stockholders, at the addresses shown on the records of the company, before the date fixed for the payment of the dividend. The unpaid dividends in this category aggregate but $85.50. The deposit thus made with the National City Bank was charged on defendant's books to the account of "Dividends Paid," to "record the reduction in surplus effected by the dividend, and credited to 'Accounts Payable.'" Eventually, the aggregate of the amounts in the "Dividends Paid" account found its way into the surplus account. The sum of the uncashed dividend checks was eventually deposited in a general bank account of the defendant by a check drawn by the Treasurer's Department. By appropriate bookkeeping entries, the unclaimed dividends were classified as income. These unclaimed dividends "were closed out in 1908 and 1938 by a transfer to 'Earnings'."

The corporation honored all claims for dividends declared prior to 1918 "made more than 6 years after such dividends became payable," in one instance as late as 1948, "as a matter of Company policy for the purpose of maintaining amicable relations with stockholders without any consideration of the question whether or not the claims therefor were barred by the statute of limitations."

In 1918, the Guaranty Trust Company of New York was appointed transfer agent of the defendant corporation, and thereafter declared dividends were paid by the check of the Trust Company drawn upon funds deposited by defendant for that purpose. These deposits were "mingled with the general funds of the Trust Company in the same manner as any general commercial deposit would be, and always remained so mingled." Again, the amounts deposited were charged by the corporation on its general ledger to the account of "Dividends Paid", and credited to "Accounts Payable." The deposits were ultimately "recorded in the surplus accounts." The defendant "has not recalled from the Trust Company the amounts of

dividend checks which have remained unpaid." The undelivered checks amount to $1,711.13, and the checks presumably delivered but not presented for payment aggregate $4,445.65, or a total of $6,156.78. The Trust Company also honored demands for dividends made more than six years after the date fixed for payment, "as a matter of Company policy" for the maintenance of "amicable relations with stockholders," without regard to the Statute of Limitations.

The defendant corporation cites *King* v. *Paterson and Hudson R. R. Co.*, 29 N. J. L. 82 (S. Ct. 1860), affirmed *Ibid.* 504 (E. & A., 1861) and *Jackson's Administrators* v. *Newark Plankroad Co.*, 31 N. J. L. 277 (S. Ct. 1865) for the proposition that the relation between a corporation and its stockholders in respect of a dividend declared and payable is that of debtor and creditor; that an action in *assumpsit* will lie for the recovery of the dividend, and the action of *assumpsit* is an action on the case directly within the limitation provisions of R. S. 2:24-1.

In the *King* case the holding of the old Court of Errors and Appeals was that after a dividend is declared, "all community of interest" in relation to the dividend ceases, and the stockholder has "a separate and independent right" to the dividend, enforceable by an action at law against the corporation after demand of payment. But Chancellor Green likened such dividends to bank deposits; and he classified them as trusts "in a limited sense." He regarded the corporation "as a trustee of the dividend unpaid to the stockholder," even though another was entrusted with the fund for the purpose of payment. He cited the *English* case of *Le Roy* v. *The Globe Insurance Co.*, 2 Edw. Ch. R. 657 (1936). There, it was held that payment of dividends withheld by a solvent corporation may be enforced at the instance of the stockholders by *mandamus*, by action at law on behalf of the individual stockholders for the payment of the money, or by bill in equity to obtain possession of the money upon the footing of its being a trust fund. The Vice Chancellor declared that where there had been an "express appropriation and setting apart" from the company's earnings of the moneys

for the payment of the declared dividends, thereby distinguishing the money from "the general mass of the company's funds," there was conferred upon the amount thus separated "the character of a trust fund which could not afterwards be diverted to other objects." He continued: "It makes no difference, in my judgment, that the money was not told out and specifically set apart in the bank to meet these checks or that a separate fund was not created for the purpose or that the money intended to meet them still formed a part of the general mass standing to the credit of the company on the books of the bank: for this court can, nevertheless, lay hold of the mass and separate so much as may be necessary to accomplish what was intended and which accident alone prevented at the time." This on the hypothesis that the matter was "no longer executory in the view of the parties;" and it was the function of equity to perform it so far as it remained unexecuted. For the fulfillment of the intention, he said, a court of equity will consider the moneys thus set apart "as a trust fund to which the stockholders had acquired vested rights—not in their corporate capacity, but as individuals to whom the money legally and equitably belonged distinct from their other interests in the funds and effects of the company." The case of *Jackson's Administrators* v. *Newark Plankroad Co.* merely held that an action in *assumpsit* would lie against an incorporated company for breach of the contract which the law implied from the relationship of the parties that an equal distribution of dividends will be made among the stockholders. There is authority for the proposition *e. g. Kane* v. *Bloodgood*, 7 Johns. C. R. 90, cited by Chancellor Green in the *King* case, that an action at law for money had and received would lie by a stockholder against a corporation for the recovery of a dividend, and that it was not such an express trust as would take the case out of the Statute of Limitations.

The trust fund theory is a more realistic concept of the substance of the transaction here and the relationship between the parties than that of a mere debt within the operation of the statute of limitations. There was a segregation from the Company's funds of the moneys to be

devoted to the payment of the dividends. The mere declaration of a dividend by a corporation gives rise to a debt as against it in favor of the individual stockholders; but where "the fund for its payment has been actually set apart and distinguished from the general mass of the company's funds, the fund so set apart becomes a trust fund for the payment of the dividend, which cannot be reached by the general creditors of the corporation, and when it becomes a trust fund for the payment of dividends it cannot be diverted and used for any other purpose. • • • There seems to be a fundamental distinction between a fund set apart for the payment of a dividend and a fund set apart for the payment of an ordinary indebtedness." *Re Interborough Consolidated Corporation*, 288 Fed. 334 (1923), 32 A. L. R. 932; certiorari denied, *Porges* v. *Sheffield*, 262 U. S. 752, 43 S. Ct. 700, 67 L. Ed. 1215 (1923). Judge Rogers invoked the principle of the English case of *Le Roy* v. *The Globe Insurance Co.*, cited *supra*, among others. He also adverted to the doctrine that where money is placed by one person in the hands of another for payment to a third person, a trust arises in favor of the latter for which the recipient may be held accountable either at law for money had and received, or in equity as a trustee, for a breach of trust. Reference was also had to the principle that where a charge or claim in the nature of a lien is placed upon property by the owner, a court of equity will establish and enforce it, "not only against the party who stipulated to give it, but also against third persons who are either volunteers, or take notice."

For the rule that segregation of funds to meet a declared dividend constitutes the corporation a trustee for the stockholders, see also *Jermain* v. *Lake Shore & Michigan So. Ry.*, 91 N. Y. 483; *Hopper* v. *Sage*, 112 N. Y. 534, 20 N. E. 350 (1889); *In re Sutherland*, 23 Fed. (2d) 595 (1928); *People* v. *The Bank of Dansville*, 39 Hun 187 (1886); *Lowne* v. *American Fire Insurance Co.*, 6 Paige 482 (1837); *Roehm* v. *Stetson*, 50 D. & C. (Pa.) 98, 104 (1943). Where there has been "an actual setting apart • • • of a part of the surplus funds" for the payment of a dividend, the dividend "became the property of the stockholders dis-

tributively." *Smith* v. *Cotting*, 231 Mass. 42, 120 N. E. 177 (1918).

The principle is rooted in our jurisprudence. In *Breslin* v. *Fries-Breslin Co.*, 70 N. J. L. 274, 287 (E. & A. 1904), the old Court of Errors and Appeals ruled that after segregation of the moneys to be devoted to the payment of a dividend, "the corporation, as such, has no property interest in the moneys thus set apart;" the directors "are trustees for the several stockholders, charged with the duty of properly apportioning among them the moneys thus set apart for their use." The trust relationship inheres in the corporate association. Mr. Justice Pitney there cited with approval this statement of the general rule: "The ideal body is, in theory of law, the principal and the board of directors are the managing agents; but, in theory of equity, the body of stockholders are the beneficiaries in a trust and the directors are their trustees."

The liability of the corporation to its stockholders in such circumstances has been likened to that of a bank to its depositors. *Armant* v. *New Orleans & C. R. Co.*, 41 La. Ann. 1020, 7 So. 35 (1889); *Larwell* v. *Burk*, 19 Ohio Cir. Ct. 513; *Yeaman* v. *Galveston City Co.*, 106 Tex. 389, 167 S. W. 710 (1914).

It results that the limitations of R. S. 2:24-1 are not operative to extinguish the stockholders' right to the dividends in question.

And the moneys withheld from the wages of employees for the purchase of Liberty Bonds, Class (d), are in the same category.

III

It is urged that, for certain reasons presently to be stated, the judgment herein does not serve to absolve the defendant corporation from liability for the payment of claims not barred by the statute of limitations, because (a) the statute under review deprives "the claimants whose claims" are not within the Statute of Limitations of their remedy for the enforcement of their contracts and provides no adequate substitute remedy, and (b) the notice of the escheat proceeding prescribed by the statute is entirely inadequate, all in violation of the contract clauses

of Article I, Section X of the Federal Constitution and Article IV, Section VII, paragraph 3 of the State Constitution of 1844, now embedded in the same article, section and paragraph of the Constitution of 1947, and the due process clauses of the Fourteenth Amendment of the Federal Constitution and Article I of the Constitution of 1844, carried into Article I, Section I of the Constitution of 1947.

As to (a), it is said that the "only substitute" remedy for the enforcement of the shareholders' contract "is the opportunity to appear, if per chance they have notice of the proceeding, and assert their claim in the escheat proceeding," and to invoke what is deemed a discretionary power to reopen the judgment within two years of the date of its entry, if there be proof of ownership of the property or the right of possession and want of actual knowledge of the escheat proceeding. It is pointed out that in this event the shareholder would not receive his stock, but only the proceeds of sale less the expenses incident to the entry of the original judgment. This, it is insisted, lessens the efficacy of the means for the enforcement of the shareholders' contract and impairs the substance and obligation of the contract, and therefore the defendant "is not protected from the claims of the stockholders."

As to (b), it is contended that the statutory procedure does not afford the stockholder "reasonable notice of the pendency of the proceeding and a reasonable opportunity to present his claim." More specifically, it is said that "the contents of the notice as prescribed by the statute" are "entirely inadequate to indicate to any interested party that the proceeding may affect his rights," and also that the "period of publication of the notice" is inadequate. The statute (R. S. 2:53-21) provides that the notice shall contain a summary of the order designating the time and place of hearing, as approved by the court, and shall be published in a manner directed by the court and shall also be published once a week for three successive weeks in a newspaper of general circulation designated by the court; and it is urged that the order designating the time and place of hearing is deficient in its failure to specify the character of the property of which escheat is sought and the names

and addresses of the last known owners, and the "basis of the alleged escheat," and therefore a "summary of the notice would be no notice whatsoever to anyone." The order provides for a more specific notice directed to the last known owners at their respective last known addresses stating the nature and character of the property made the subject of the escheat proceeding; but it is maintained that the sufficiency of the statute as to notice is determined by its requirements, not by the notice actually given. The principle of the case of *Wuchter* v. *Pizzutti*, 276 U. S. 13, 48 S. Ct. 259, 72 L. Ed. 446 (1928) is invoked. It has no application here.

Procedural due process involving property rights takes into account the purposes of the procedure and its effect upon the interests concerns, and all the other circumstances bearing upon the appropriateness of the proceeding to the nature of the case. The fundamental requisite of due process is an opportunity to be heard on such notice as is in keeping with the character of the proceeding and adequate to safeguard the right entitled to protection. *Dohany* v. *Rogers*, 281 U. S. 362, 50 S. Ct. 299, 74 L. Ed. 904 (1930), 68 A. L. R. 434. The proceeding here is *in personam* so far as the defendant corporation is concerned; and *quasi in rem* as regards the unknown owners or owners whose whereabouts are unknown. Seizure of the property was effected by personal service of process upon the defendant corporation. *Security Savings Bank* v. *California*, *supra*. And since personal service of process upon the holder constituted a seizure of the *res*, it is "deemed to supplement the publication as an independent notice, in itself," to the unknown owners of the abandoned property "of the seizure and of their opportunity given by the statute to appear and assert their claims against the state." *Anderson National Bank* v. *Luckett*, *supra*. There the statute provided for the posting of notice of the proceeding on the court house door; and the holding was that "this, in conjunction with the notice provided by the statute itself and by the taking of possession of the bank balances by the state, is sufficient notice to the depositors to satisfy all requirements of due process." Chief Justice Stone said: "The statute itself

is notice to all depositors of banks within the state, of the conditions on which the balances of inactive accounts will be deemed presumptively abandoned, and their surrender to the state compelled. All persons having property located within a state and subject to its dominion must take note of its statutes affecting the control or disposition of such property and of the procedure which they set up for those purposes." As we have seen, the State has the same dominion over intangible property that it has over tangible property. *Security Savings Bank* v. *California, supra.* Procedure of the same character, initiated by the seizure of the *res*, has been sustained as providing adequate notice to absentee owners in escheat actions. *Hamilton* v. *Brown*, 161 U. S. 256, 16 S. Ct. 585, 40 L. Ed. 691 (1896); *Christianson* v. *King*, 239 U. S. 356, 36 S. Ct. 114, 60 L. Ed. 327 (1915).

Here, as in the case of *Security Savings Bank* v. *California*, the statute is not self-executing. The lapse of the prescribed time does not work an immediate escheat. The turnover of the *res* comes only after a judicial determination of the existence of the statutory conditions. There must be proof that the owner is and has remained unknown for fourteen successive years, or that the owner's whereabouts is and has remained unknown for a like period, or that the *res* is and has remained unclaimed for the same period. A valid claim to the property made prior to the entry of the judgment of escheat prevents its transfer to the State. The notice of the proceeding prescribed by the statute is sufficient to meet the demands of due process. It is all that is practicable in the circumstances. As stated, it is provided that the notice shall contain a summary of the order fixing the time and place of hearing, as approved by the court, and shall be published once a week for three successive weeks in a newspaper of general circulation designated by the court. Shorter periods have been deemed sufficient where land was involved. *Anderson National Bank* v. *Luckett, supra.* And it is implicit in the statute that the notice shall identify the property of which escheat is sought and the last known owner. That is of the very nature of the notice thus prescribed. There could not be "notice" within the view of the statute without identifica-

tion of the subject matter of the proceeding. It does not matter whether the state receives the *res* merely as a depositary or takes it as an escheat. *Security Savings Bank* v. *California, supra.* The statute provides that the judgment entered thereunder shall operate as an absolute and unconditional release and discharge of the holder of the *res* from liability to any person other than the State Treasurer. R. S. 2:53-23.1.

The circumstances did not permit of a more effective notice. Moreover, the judgment did not terminate the right to rebut the presumption of abandonment and claim the *res*. This right was reserved to the owner in absolute and unconditional terms for a period of two years after entry of the judgment, exercisable by a motion to reopen the judgment. R. S. 2:53-31. In the performance of this function, the court is not vested with arbitrary discretion. The exercise of the statutory discretion implies conscientious judgment, not arbitrary action. The statutory criteria of ownership or right of possession and a failure of actual notice of the escheat proceeding control the exercise of power. When these conditions are met, the court must give judgment for the claimant. In the classic terms of Lord Mansfield, judicial discretion "means sound discretion guided by law. It must be governed by rule, not by humour: it must not be arbitrary, vague, and fanciful; but legal and regular." *Rex* v. *Wilkes*, 4 Burr. 2527, 2539, 98 Eng. Rep. Full Reprint 327 (1770). The statute provides no other standard of judicial action. It has in view a more legal discretion—"a discretion to be exercised in discerning the course prescribed by law; and, when that is discerned, it is the duty of the court to follow it." *Osborn* v. *The Bank of the United States*, 9 Wheaten 738, 866, 6 L. Ed. 204 (1824).

In the case of persons missing or unknown, the practicalities and peculiarities of the case are to be regarded in determining the sufficiency of the notice of hearing. In cases of this class, it is not reasonably possible or practicable to give more adequate warning than that afforded by publication. An "indirect and even a probably futile means of notification is all that the situation permits and creates no constitutional bar to a final decree foreclosing their

rights." *Mullane* v. *Central Hanover B. & T. Co.*, —— U. S. ——, S. Ct. ——, 94 L. Ed. 578 (1950). There, a statute permitting trust companies to pool small trust estates into one common fund for investment and administration provided for the publication of notice of a proceeding for the settlement of the trustee's account "addressed generally without naming them to all parties interested" in the common trust fund. The notice required, and the only one given, was by newspaper publication setting forth merely the name and address of the trust company, the name and the date of establishment of the common trust fund, and a list of all participating estates, trusts or funds. It was held that this notice was sufficient as to beneficiaries "whose interests or whereabouts could not with due diligence be ascertained." Mr. Justice Jackson said: "As to them the statutory notice is sufficient. However great the odds that publication will never reach the eyes of such unknown parties, it is not in the typical case much more likely to fail than any of the choices open to legislators endeavoring to prescribe the best notice practicable." Publication was held insufficient as to known present beneficiaries of known place of residence. In this regard the act was found to be incompatible with the requirements of the Fourteenth Amendment.

Where the procedure is appropriate, neither the due process clause nor any right of the defendant corporation under the contract clause is violated by a law requiring it to deliver to the State property which has long remained unclaimed and presumably has been abandoned. The prescribed notice answers the demands of due process. No other service is feasible in the circumstances. In the nature of things the owners of the property can be treated as persons unknown.

The defendant corporation's capital stock escheated by the judgment were all shares on which dividends had remained unclaimed for more than fourteen successive years immediately prior to the institution of the proceeding. There is in this situation a presumption of abandonment. A different case would be presented if no dividends had been declared during the statutory period, and there

was no showing that the owner's whereabouts was unknown for the statutory period.

It is contended also that, for want of a situs in New Jersey, the subject choses in action are not escheated here, and the judgment is *coram non judice*. The defendant corporation is a creature of and is therefore domiciled and resident in New Jersey. *State* v. *Garford Trucking, Inc.*, 4 N. J. 346 (1950). The owners of the escheated obligations are missing or unknown. The property is presumptively abandoned. The sovereignty in which the corporation lives and has its being has dominion over its debtor obligations, through its control of the corporation. *Security Savings Bank* v. *California, supra*; *Anderson National Bank* v. *Luckett, supra*. See, also, *State Tax Commission* v. *Aldrich*, 316 U. S. 174, 62 S. Ct. 1008, 86 L. Ed. 1358 (1942), 139 A. L. R. 1436; *Northwest Air Lines* v. *Minnesota*, 322 U. S. 292, 64 S. Ct. 950, 88 L. Ed. 1283 (1944), 153 A. L. R. 245; *Connecticut Mutual Life Insurance Co.* v. *Moore, supra*. The corporation was not absolved of its obligation by the creation of the trust fund with the New York bank for the payment of the declared dividends.

The statute ordains that where the value of the property made subject to escheat is less than $50, publication of any notice may be dispensed with if the court so orders; and the order here provides that in such cases "the advertisement need not contain the name nor address of such person or corporation." The judgment of escheat included this property; and to this extent it does not satisfy the demands of procedural due process. The subject matter was not sufficiently identified to constitute adequate notice. Under the statute the State does not proceed administratively to take the property into its protective custody, subject to eventual escheat, as in *Provident Institution for Savings* v. *Malone*, 221 U. S. 660, 55 L. Ed. 899 (1911) and *Connecticut Mutual Life Insurance Co.* v. *Moore, supra*, but rather to subject it to escheat through judicial process, as in *Security Savings Bank* v. *California, supra;* and so there must be compliance with the requirements of due process. *Vide Anderson National Bank* v. *Luckett, supra; Connecticut Mutual Life Insurance Co.* v. *Moore, supra; Roth* v.

Delano, supra. But the invalidity of this provision does not affect the remainder of the act. R. S. 2:53-32.

The allowances to counsel and the escheator are subject to revision by the Superior Court in keeping with the decree as herein modified.

The judgment is accordingly modified, and, as so modified, affirmed.

VANDERBILT, *C. J.* (dissenting):

I am in accord with the principles and conclusions expressed in Parts I and II of the majority opinion holding that the State may not take by escheat the property possessed by the defendant when the Statute of Limitations has barred the owner's right to recover, and that the State may take by escheat that property which the defendant holds in trust, including its stock and unpaid dividends thereon, but not with that portion of Part III of the opinion dealing with the adequacy of the notice prescribed by the Escheat Act and the status of the defendant to resist the escheat. I am therefore constrained to dissent. To my mind the Escheat Act, R. S. 2:53-13, *et. seq.*, is fatally defective for lack of the procedural safeguards necessary to satisfy the constitutional requirement of "due process."

The validity of the statute and the proceedings thereunder depend upon the adequacy of the notice prescribed by the statute and not by the notice that may in fact have been given in the particular instance, *Wuchter* v. *Pizzutti*, 276 U. S. 13, 72 L. Ed. 446, 45 Sup. Ct. 259 (1928); *Weiner* v. *Wittman*, 129 N. J. L. 35 (Sup. Ct. 1942). The notice to be given to the owners of the property of which escheat is sought is provided by R. S. 2:53-21. It does not require that the names and addresses of the last known owners be given, nor that the character of the property be specified, nor that the basis of escheat be set forth. This notice, moreover need only be published once a week for three successive weeks in a single newspaper, and the owner to whom it is supposedly directed must file his claim five days before the time fixed for the hearing. Such notice is wholly inadequate when it is borne in mind that the very purpose of the act is to extinguish the rights of persons whose names

or whereabouts are unknown. Neither the information contained in the notice, nor the publication of it, nor the time allowed to file a claim are reasonably calculated to inform the owners of the property of the impending proceedings and to give them an opportunity to appear and protect their interests. The notice required by the statute is, in effect, no notice at all to anyone.

Nor do I consider the inadequacy of the notice required by the statute any less important because of the fact that the owners of the escheated property may apply to reopen the proceedings at any time within two years and "upon proof that they were without actual knowledge of such escheat proceedings, and of proof of ownership of such property or the right to possession thereof, the court *may in its discretion* reopen the decree" and order the State Treasurer to repay the moneys received by the State, less expenses and costs, R. S. 2:53,31. Not only does the judgment in the escheat proceeding start the running of the two year period after which the right of the owner of the property is automatically and forever barred, but the right to recover during the two year period is not absolute, but within the discretion of the court. In the majority opinion it is stated that the court must enter judgment for the claimant if "the statutory criteria of ownership or right of possession and a failure of actual notice of the escheat proceeding" are proven; that the statute contemplates a "mere legal discretion". With this interpretation I do not agree. If the claimant to the escheated property is entitled to recover upon proof of these two conditions, then the court is not exercising its discretion but following the legislative mandate. In that event the words of the statute "may in its discretion" are of no meaning or effect, and it is not to be considered that the Legislature employed them fruitlessly.

I would reverse the judgment below in its entirety.

Mr. Justice Case has authorized me to state that he joins in this dissent.

EXHIBIT D

SUPREME COURT OF NEW JERSEY

APPEAL DOCKET No. 445

STATE OF NEW JERSEY, by THEODORE D. PARSONS, Attorney General, Plaintiff-Respondent,

vs.

STANDARD OIL COMPANY, Defendant-Appellant

Civil Action on Appeal. Mandate on Modification

This cause having been duly argued before this Court by Mr. Josiah Stryker, counsel for the appellant and Mr. Emerson Richards, Deputy Attorney General, counsel for the respondent, and the Court having considered the same,

It is hereupon ordered and adjudged that the judgment of the said Superior Court—Chancery Division be and the same hereby is modified; and it is further ordered that this mandate shall issue ten days hereafter, unless an application for rehearing shall have been granted or is pending, or unless otherwise ordered by this Court, and that the record be remitted to the Superior Court—Chancery Division to be there proceeded with in accordance with the rules and practice relating to that court, consistent with the opinion of this Court.

WITNESS the Honorable Arthur T. Vanderbilt, Chief Justice, at Trenton on the 27th day of June, 1950.

CHARLES K. BARTON,
Clerk of the Supreme Court.

Filed Jun. 27 1950. CHARLES K. BARTON, *Clerk.*

A true copy, CHARLES K. BARTON, *Clerk.*